

**OFFICIAL CODE
OF
GEORGIA
—
ANNOTATED**



VOLUME 33

Title 45. Public Officers and Employees

2002 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by
The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis™



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Volume 33 **2002 Edition**

Title 45. Public Officers and Employees

Including Acts of the 2002 Session of the General Assembly
of Georgia Notes to the Georgia Reports
and the Georgia Appeals Reports

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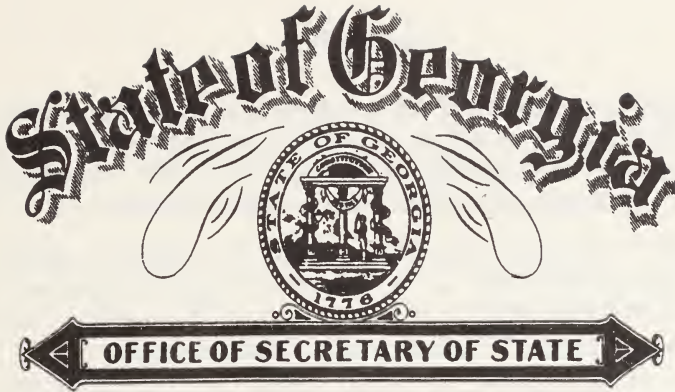
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I, Cathy Cox, Secretary of State of the State of Georgia, do hereby certify that the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as same appear of file and record in this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this
1st day of August , in the year of our Lord
Two Thousand and Two
and of the Independence of the United States of America the
Two Hundred and Twenty-sixth.

Cathy Cox

SECRETARY OF STATE

Preface

This volume cumulates and replaces the 1990 edition of Volume 33 of the Official Code of Georgia Annotated, as supplemented by the 2001 Cumulative Supplement. The 1990 Volume 33 and its 2001 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 45 by the General Assembly through the 2002 Session. This volume also contains case annotations reflecting decisions posted to LEXIS-NEXIS® through March 25, 2002. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LEXIS-NEXIS® citations will be made.

Additionally, LexisNexis™ has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; and American Law Reports. Also included where appropriate are cross-references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2000, 2001, and 2002 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2000 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Impersonating a public officer or employee, § 16-10-23. Rights of public officers and employees absent on

military duty as members of organized militia or reserve forces, § 38-2-279.

CHAPTER 1

GENERAL PROVISIONS

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45-1-1.	Employees of state hospitals and certain state institutions authorized to make purchases of goods and services; limitations.	45-1-4.	Complaints or information from public employees as to fraud, waste, and abuse in state programs and operations.
45-1-2.	Actions by or against public officers who have left office.	45-1-5.	Purging of personnel records of terminated employee.
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45-1-1. Employees of state hospitals and certain state institutions authorized to make purchases of goods and services; limitations.

Except as provided in Code Sections 45-10-20 through 45-10-25, employees of hospitals, educational institutions, eleemosynary institutions, penal institutions, and correctional institutions which are under the control and jurisdiction of a state department or the Board of Regents of the University System of Georgia shall be entitled to obtain goods and services in the same manner and under the same procedure used in obtaining such goods and services through such hospitals and institutions and the laws of this state relating to purchasing contrary thereto shall not apply to such employees; provided, however, that no employee shall be permitted to make any single purchase of goods or services in excess of \$50.00, except medical and dental services only; and in no event shall any employee obtain goods or services for any person except for himself or members of his immediate family. (Ga. L. 1956, p. 383, § 1; Ga. L. 1990, p. 8, § 45.)

45-1-2. Actions by or against public officers who have left office.

- (a) When an action has been commenced by or against a public officer of the state in his official capacity and such officer's successor in office has been substituted as a party pursuant to subsection (d) of Code Section 9-11-25, such action shall proceed as if no change of parties had been made, provided that it shall be within the discretion of the court to allow the successor in office such time as it may deem necessary to appear, plead, or otherwise proceed with such action.
- (b) This Code section shall not apply to actions against officers for damages on account of tortious acts committed by such officer under color of office, which actions survive against such officer or his personal representatives, notwithstanding the death, resignation, removal, or expiration of the term of such officer.

(c) This Code section shall relate only to actions commenced by or against state officers in their official capacity and shall not relate or apply to actions commenced by or against municipal, district, or county officers. (Ga. L. 1941, p. 516, §§ 2, 4, 5; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 400.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 252, 253.

ALR. — Responsibility of public officer for negligence of subordinate in operation of vehicle, 3 ALR 149.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it, 2 ALR3d 822.

45-1-3. Display or sale of motor vehicle tag or any type of sign purporting that owner serves on Governor's staff.

(a) Without the written permission of the Governor, it shall be unlawful to display in any manner upon any motor vehicle a sign, tag, or emblem of any fashion purporting to convey the impression that the owner thereof is a member of the Governor's staff.

(b) It shall be unlawful to sell or offer to sell any such sign, tag, or emblem.

(c) Any person, firm, or corporation who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1964, p. 198, §§ 1-3.)

45-1-4. Complaints or information from public employees as to fraud, waste, and abuse in state programs and operations.

(a) As used in this Code section, the term:

(1) "Public employee" means any person who is employed by the executive branch of the state or by any other department, board, bureau, commission, authority, or other agency of the state except the office of the Governor, the judicial branch, or the legislative branch.

(2) "Public employer" means the executive branch of the state and any other department, board, bureau, commission, authority, or other agency of the state which employs or appoints a public employee or public employees except the office of the Governor, the judicial branch, or the legislative branch.

(b) A public employer may receive and investigate complaints or information from any public employee concerning the possible existence of any activity constituting fraud, waste, and abuse in or relating to any state programs and operations under the jurisdiction of such public employer.

(c) Notwithstanding any other law to the contrary, such public employer shall not after receipt of a complaint or information from a public employee disclose the identity of the public employee without the written consent of such public employee, unless the public employer determines such disclosure is necessary and unavoidable during the course of the investigation. In such event, the public employee shall be notified in writing at least seven days prior to such disclosure.

(d) No action against any public employee shall be taken or threatened by any public employer who has authority to take, direct others to take, recommend, or approve any personnel action as a reprisal for making a complaint or disclosing information to the public employer unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(e) Any action taken in violation of subsection (d) of this Code section shall give the public employee a right to have such action set aside in a proceeding instituted in the superior court. (Code 1981, § 45-1-4, enacted by Ga. L. 1993, p. 563, § 1.)

Cross references. — Reprisals prohibited against community service board, § 37-2-6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “office of the

Governor” was substituted for “Office of the Governor” in paragraphs (a)(1) and (a)(2).

JUDICIAL DECISIONS

Programs or operations covered by section. — O.C.G.A. § 45-1-4 applies to any state programs or operations, including those state programs over which an agency has administrative jurisdiction that are less than state-wide in scope. *Weaver v. North Georgia Reg'l Educ. Serv. Agency*, 243 Ga. App. 770, 534 S.E.2d 463 (2000), reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

Regional educational service agency was a “public employer” under O.C.G.A. § 45-1-4. *Weaver v. North Georgia Reg'l Educ. Serv. Agency*, 243 Ga. App. 770, 534 S.E.2d 463 (2000), reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

Activities constituting fraud, waste, and abuse. — Plaintiff employee's report to a supervisor that plaintiff thought another employee was making personal use of a copier constituted making a complaint or providing information as to the possible existence of an activity constituting fraud, waste, and abuse. *Weaver v. North Georgia*

Reg'l Educ. Serv. Agency, 243 Ga. App. 770, 534 S.E.2d 463 (2000), reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

Persons authorized to receive complaints. — Supervisor who could officially evaluate agency employees and thus take or recommend adverse personnel action against them was operating at that level of management authorized to receive potential fraud, waste, and abuse complaints and information on behalf of the agency. *Weaver v. North Georgia Reg'l Educ. Serv. Agency*, 243 Ga. App. 770, 534 S.E.2d 463 (2000), reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

Persons to whom O.C.G.A. § 45-1-4 applies. — O.C.G.A. § 45-1-4 applies solely to persons employed in state government. By its terms, it does not apply to persons who work in the governor's office, the General Assembly, the judicial branch of state government, or any local unit of government. *North Ga. Regional Educ. Serv. Agency v. Weaver*, 272 Ga. 289, 527 S.E.2d 864 (2000),

reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

Regional agencies not covered. — Regional educational service agencies are not state agencies and, therefore, are not public

employers under O.C.G.A. § 45-1-4. *North Ga. Regional Educ. Serv. Agency v. Weaver*, 272 Ga. 289, 527 S.E.2d 864 (2000), reversing *Weaver v. North Ga. Regional Educ. Serv. Agency*, 238 Ga. App. 72, 517 S.E.2d 794 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Assuming applicability of O.C.G.A. § 45-1-4 to the Georgia National Guard, referral of a member's complaint of fraud, waste or other abuse to a commanding officer, and by that officer to an investigator,

was not a prohibited disclosure, and disciplinary action could be taken against a member who knowingly submitted false reports. 1996 Op. Att'y Gen. No. 96-15.

RESEARCH REFERENCES

ALR. — Pre-emption by workers' compensation statute of employee's remedy under state "whistleblower" statute, 20 ALR5th 677.

Who are "public employers" or "public employees" within the meaning of state

whistleblower protection acts, 90 ALR5th 687.

Prohibition, by Civil Service Reform Act of 1978, of reprisals against civil service whistleblowers (5 USCS § 2302(b)(8)), 124 ALR Fed. 381.

45-1-5. Purging of personnel records of terminated employee.

When an employee of the state or of a county, municipality, or school district is terminated and, as a condition of a settlement agreement, the personnel file of the employee is to be partially or totally purged, the former employee's personnel records, including both the personnel file and any associated work history records, shall be clearly designated with a notation that such records have been purged as a condition of a settlement agreement. Such notation shall be disclosed to any subsequent governmental entity seeking information as to a former employee's work history for the sole purpose of making a hiring decision. (Code 1981, § 45-1-5, enacted by Ga. L. 1995, p. 1081, § 1.)

45-1-6. Gifts to employees by vendors; disclosure; reports.

(a) As used in this chapter, the term:

(1) "Commission" means the State Ethics Commission created under Code Section 21-5-4.

(2) "Gift" means a gratuity, subscription, membership, trip, meal, loan, extension of credit, forgiveness of debt, advance or deposit of money, or anything of value.

(3) "Person" means an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

(4) “Public employee” means every person employed by the executive, legislative, or judicial branch of state government or any department, board, bureau, agency, commission, or authority thereof. This shall not include elected officials.

(5) “Vendor” means any person who sells to or contracts with any branch of state government or any department, board, bureau, agency, or commission thereof for the provision of any goods or services.

(b) Any vendor who, either directly or through another person, makes a gift or gifts to one or more public employees exceeding in the aggregate \$250.00 in value during any calendar year shall file a disclosure report with the commission in the form specified by the commission listing the amount and date of receipt, the name and mailing address of any vendor making the gift, and the name, address, and position of each public employee receiving such a gift.

(c) Each disclosure report required by subsection (b) of this Code section shall be filed with the commission not later than February 1 of each year and shall cover the preceding calendar year.

(d) A report required by this Code section shall be verified by the oath or affirmation of the person filing such report or statement taken before an officer authorized to administer oaths. Each report required in a calendar year shall contain cumulative totals of all gifts which have been made or received and which are required to be reported.

(e) In addition to other penalties provided under this Code section, a filing fee of \$50.00 shall be imposed for each report that is filed late. In addition, a filing fee of \$25.00 shall be imposed on the fifteenth day after the due date if the report has still not been filed.

(f) The commission is vested with the same powers with respect to this Code section as enumerated in Code Section 21-5-6.

(g) Venue for prosecution of civil violations of this Code section or for any other action by or on behalf of the commission shall be in the county of residence of the accused person at the time of the alleged violation or action.

(h) Any person who knowingly fails to comply with or knowingly violates this Code section shall be guilty of a misdemeanor. (Code 1981, § 45-1-6, enacted by Ga. L. 1996, p. 1069, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Individuals required to file disclosure report. — All individuals who sell to or contract with any entity of state government and who give any gifts to public employees which in the aggregate exceed \$250 in value must,

by February 1 of each calendar year, file a disclosure report with the State Ethics Commission. 1997 Op. Att’y Gen. No. U97-12.

Ordinary financial transactions excepted from disclosure. — O.C.G.A. § 45-1-6 does

not require the disclosure of ordinary financial transactions, such as loans or extensions of credit and deposits, made in the ordinary course of business. 1996 Op. Att'y Gen. No. 96-20.

CHAPTER 2

ELIGIBILITY AND QUALIFICATIONS FOR OFFICE

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		45-2-42.	State department or agency to furnish standards of fitness of positions.
		45-2-43.	Examining medical practitioner to make report; conditions impairing prescribed duties; consent for distribution of additional confidential medical information; reports; confidentiality of files.
		45-2-44.	State Personnel Board to adopt rules and regulations; expenditure of funds.
		45-2-45.	Applicability of article.

ARTICLE 1

GENERAL PROVISIONS

45-2-1. Persons ineligible to hold civil office; vacation of office; validity of acts performed while in office.

The following persons are ineligible to hold any civil office; and the existence of any of the following facts shall be a sufficient reason for vacating any office held by such person; but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, namely:

(1) Persons who are not citizens of this state and persons under the age of 21 years; provided, however, that upon passage of appropriate local ordinances, citizens of this state who are otherwise qualified and who have attained 18 years of age shall be eligible to hold any county or municipal office, except such offices of a judicial nature. The residency requirement for a candidate for any county office, except offices of a judicial nature, shall be 12 months residency within the county. The residency requirement for a candidate for any municipal office, except offices of a judicial nature, shall be 12 months residency within the municipality; provided, however, that municipalities may by charter provide for lesser residency requirements for candidates for municipal office, except offices of a judicial nature;

(2) All holders or receivers of public money of this state or any county thereof who have refused or failed when called upon after reasonable opportunity to account for and pay over the same to the proper officer;

(3) Any person finally convicted and sentenced for any felony involving moral turpitude under the laws of this or any other state when the offense is also a felony in this state, unless restored to all his rights of citizenship by a pardon from the State Board of Pardons and Paroles;

(4) Persons holding any office of profit or trust under the government of the United States other than that of postmaster and officers and enlisted men of the reserve components of the armed forces of the United States, or of either of the several states, or of any foreign state; provided, however, that without prejudice to his right to hold public office, any person may accept appointment to, and may receive his expenses and compensation arising from, membership upon any commission, board, panel, or other fact-finding or policy-making agency appointed by the President of the United States or other federal authority, where such appointment is of a temporary nature and the duties are not such as to interfere materially with the person's duties as a public officer. Acceptance of such an appointment and receipt of the emoluments therefrom shall not bar the right of any person to hold office in this state or to accede to a state office;

(5) Persons of unsound mind and persons who, from advanced age or bodily infirmity, are unfit to discharge the duties of the office to which they are chosen or appointed;

(6) Those persons who have not been inhabitants of the state, county, district, or circuit for the period required by the Constitution and laws of this state;

(7) A person who has not been a bona fide citizen of the county in which that person shall be elected or appointed at least 12 months prior to that person's election or appointment and who is not a qualified voter entitled to vote; provided, however, that no prior state or county

residency requirement shall be applicable to any appointed local superintendent of schools; or

(8) All persons who are constitutionally disqualified for any cause. All officers are eligible for reelection and reappointment and to hold other offices, unless expressly declared to the contrary by the Constitution or laws of Georgia. (Laws 1787, Cobb's 1851 Digest, p. 366; Laws 1823, Cobb's 1851 Digest, p. 209; Code 1863, § 125; Code 1868, § 120; Code 1873, § 129; Code 1882, § 129; Civil Code 1895, § 223; Ga. L. 1900, p. 42, § 1; Civil Code 1910, § 258; Ga. L. 1925, p. 77, § 1; Ga. L. 1931, p. 126, § 1; Code 1933, § 89-101; Ga. L. 1972, p. 868, § 1; Ga. L. 1976, p. 464, §§ 1, 2; Ga. L. 1982, p. 3, § 45; Ga. L. 1987, p. 3, § 45; Ga. L. 1988, p. 930, § 1; Ga. L. 1989, p. 596, § 1; Ga. L. 1992, p. 1138, § 1; Ga. L. 1993, p. 1279, § 15.)

Cross references. — Persons not eligible to hold office, Ga. Const. 1983, Art. II, Sec. II, Para. III. Vacancies created by elected officials qualifying for other office, Ga. Const. 1983, Art. II, Sec. II, Para. V. Nature and effect of adjudication, § 15-11-72. Certain county officials ineligible, § 15-12-21. Eligibility of subversive persons to hold office or position in government, § 16-11-12. Eligibility and qualifications of candidates for public office, §§ 21-2-5 through 21-2-8.

Editor's notes. — Ga. L. 1972, p. 193, § 10, provided that it was the purpose of the Act to reduce the age of legal majority from 21 years to age 18 years of age so that all persons, upon reaching the age of 18 would have the rights, privileges, powers, duties, responsibilities, and liabilities, previously applicable to persons 21 years of age or over.

The section further provided that the Act was not to be construed as having the effect of changing the provisions of any general law relative to the required age to qualify for holding public office.

Law reviews. — For article on the effects of a conviction based on a nolo contendere plea on voting and holding public office, see 13 Ga. L. Rev. 723 (1979). For article surveying Georgia cases citing developments in Georgia local government law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981).

For comment criticizing *Tarpley v. Carr*, 204 Ga. 721, 51 S.E.2d 638 (1949), requiring de jure offices to exist before acts by de facto city officers can be validated, see 1 Mercer L. Rev. 120 (1949).

JUDICIAL DECISIONS

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FELONY INVOLVING MORAL TURPITUDE

1. IN GENERAL

2. PARDON

PERSONS HOLDING OTHER OFFICES

ELIGIBILITY FOR COUNTY OFFICES

1. RESIDENCY REQUIREMENT

2. QUALIFIED VOTER REQUIREMENT

General Consideration

Qualifications prescribed by Constitution.

— Where the Constitution has prescribed the qualifications which allow and prevent

eligibility to a public office, the General Assembly cannot by statute add to or take from those conditions of eligibility. *Griggers v. Moye*, 246 Ga. 578, 272 S.E.2d 262 (1980).

Local legislation not in conflict. — Local

General Consideration (Cont'd)

legislation requiring candidates for the county commission to run for election from the district in which their legal residence lies did not conflict with former Ga. Const. 1976, Art. IX, Sec. I, Para. VIII (see Ga. Const. 1983, Art. IX, Sec. I, Para. III) and O.C.G.A. § 45-2-1. *Griffin v. Glynn County*, 264 Ga. 823, 452 S.E.2d 109 (1995).

Ineligibility to hold office is the exception. — Eligibility to hold office is the general rule; ineligibility is the exception. *Weems v. Glenn*, 199 Ga. 388, 34 S.E.2d 511 (1945).

O.C.G.A. § 45-2-1(1) through (8), inclusive, provide exceptions to the general rule. *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930).

Construction in favor of eligibility. — Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified. *Weems v. Glenn*, 199 Ga. 388, 34 S.E.2d 511 (1945).

Restrictions on eligibility for municipal office. — There is no general law making eligibility to hold municipal office dependent on qualification to vote. Restrictions of that character may be provided in the charter of a municipality, but, unless so provided, they do not exist in the absence of general law on the subject. *Beazley v. Lunceford*, 178 Ga. 683, 173 S.E. 852 (1934).

Military personnel holding municipal office. — Enlisted personnel on active duty in United States Navy are not ineligible under O.C.G.A. § 45-2-1 to hold municipal office in Georgia, since O.C.G.A. § 45-2-1 applies only to those holding or seeking to hold civil offices of a state character and officers of municipal corporations do not hold a civil office within the meaning of O.C.G.A. § 45-2-1. *Westberry v. Saunders*, 250 Ga. 240, 296 S.E.2d 596 (1982).

De facto officer. — Where an individual was appointed to the position of recorder's court judge pro tem, and at all times subsequent to appointment held self out to the public as a recorder's judge pro tem and performed the duties of that office, including accepting guilty pleas, issuing search warrants, and holding preliminary hearings, that individual was a de facto officer and as

such that individual's acts could not be collaterally attacked and set aside; thus, a search warrant issued by this individual was not null and void, and there was nothing in the record to indicate that the recorder court judge pro tem did not act in a neutral and detached manner in issuing the warrant. *Freeman v. State*, 172 Ga. App. 168, 322 S.E.2d 289 (1984).

Cited in *Culbreth v. Cannady*, 168 Ga. 444, 148 S.E. 102 (1929); *McGill v. Simmons*, 172 Ga. 127, 157 S.E. 273 (1931); *McBrien v. Starkweather*, 43 Ga. App. 818, 160 S.E. 548 (1931); *Odum v. Jones*, 176 Ga. 147, 167 S.E. 304 (1932); *Cooper v. Lewis*, 177 Ga. 229, 170 S.E. 68 (1933); *Marshall v. Walker*, 183 Ga. 44, 187 S.E. 81 (1936); *Morgan v. Crow*, 183 Ga. 147, 187 S.E. 840 (1936); *McLendon v. Everett*, 205 Ga. 713, 55 S.E.2d 119 (1949); *Barrett v. Slagle*, 214 Ga. 650, 106 S.E.2d 908 (1959); *Varnadoe v. Housing Auth.*, 221 Ga. 467, 145 S.E.2d 493 (1965); *Bond v. Floyd*, 251 F. Supp. 333 (N.D. Ga. 1966); *Daniel v. Yow*, 226 Ga. 544, 176 S.E.2d 67 (1970); *Dunn v. Cofer*, 134 Ga. App. 173, 213 S.E.2d 483 (1975); *Westley v. State*, 143 Ga. App. 344, 238 S.E.2d 701 (1977); *Lucas v. Woodward*, 240 Ga. 770, 243 S.E.2d 28 (1978); *Irwin v. Busbee*, 241 Ga. 567, 247 S.E.2d 103 (1978); *Ramsey v. Powell*, 244 Ga. 745, 262 S.E.2d 61 (1979).

Holders of Public Funds

Prior removal for misconduct. — The conviction of an officer for misbehavior and misconduct in office in the illegal appropriation of public funds, and the officer's removal from office, are equivalent to an adjudication that the officer is ineligible to hold said office for and during the remainder of the term for which elected; therefore, the officer cannot be a candidate for the vacancy caused by the officer's own removal. *McClellan v. Pearson*, 163 Ga. 492, 136 S.E. 429 (1927).

Failure of tax collector to pay over taxes collected. — O.C.G.A. § 45-2-1(2) does not mean that a person is ineligible to hold the office of sheriff, as being the holder of public money unaccounted for, merely by reason of the fact that as tax collector one failed and refused to pay over to the county taxes collected, was cited by the county commissioners for a settlement, and that upon

failure to settle, an execution was issued against the tax collector and bondsmen, which was subsequently paid by the bondsmen; as there are circumstances under which a tax collector could act in the best of faith in the performance of trust, and still be unable to account personally for taxes collected. *Weems v. Glenn*, 199 Ga. 388, 34 S.E.2d 511 (1945).

Felony Involving Moral Turpitude

1. In General

Acts involving intoxicating liquors. — Neither the transportation and possession of non-tax-paid liquor nor the unlawful sale of intoxicating liquors is a crime involving moral turpitude. *Hutto v. Rowland*, 226 Ga. 889, 178 S.E.2d 180 (1970).

Applicability to county superintendent of schools. — O.C.G.A. § 45-2-1(3) had no application to the office of county superintendent of schools for the reason that former O.C.G.A. § 20-2-102 (now see O.C.G.A. § 20-2-101), which defined the qualifications of county school superintendents, did not require that one be convicted “and sentenced” before one was ineligible to hold the office by reason of a crime involving moral turpitude. *Huff v. Anderson*, 212 Ga. 32, 90 S.E.2d 329 (1955).

2. Pardon

No restoration of public office. — While the grant of a pardon restores one to full rights of citizenship, including the right to hold public office, and operates to remove all blot and stain growing out of a previous conviction of a felony involving moral turpitude, it does not operate to confer or restore a public office which was previously held, but which on account of the previous conviction and sentence was necessarily relinquished. *Morris v. Hartsfield*, 186 Ga. 171, 197 S.E. 251 (1938).

Ineligibility not removed. — Where the right of a county commissioner to hold office is attacked by reason of one having been, previous to election, convicted of a felony, and therefore not a qualified voter or eligible “to hold any civil office,” the fact that one received a pardon after the institution of the quo warranto proceedings, but prior to the decision of the trial judge, does

not remove ineligibility. *Hulgan v. Thornton*, 205 Ga. 753, 55 S.E.2d 115 (1949).

Persons Holding Other Offices

Federal offices. — Where the Governor undertook to declare vacancies in the offices of a member and chairman of the State Highway Board (now Transportation Board), for ineligibility of the incumbent because of the incumbent’s holding a federal office, but the order recited only that the incumbent held an office of profit or trust under the government of the United States, without stating what federal office the incumbent held, the order did not show ineligibility as claimed, since, for aught that appears, the federal office, if held, might have been one of the excepted offices. *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940).

A federal magistrate, even if only part-time, is ineligible to hold a civil office. *Highsmith v. Clark*, 245 Ga. 158, 264 S.E.2d 1 (1980).

County offices. — O.C.G.A. § 45-2-1 does not prohibit a member of a county school board from also holding office as a trustee of a local school district. The latter is not definable as a county office under O.C.G.A. § 45-2-2 so the provisions of O.C.G.A. § 45-2-2 are inapplicable. *Casey v. McElreath*, 177 Ga. 35, 169 S.E. 342 (1933).

Consolidated government officers. — A provision in the charter granting authority to a consolidated government to redefine membership of a municipal board of water commissioners did not grant authority to appoint a city council member to the board, where such appointments constituted a conflict of interest under O.C.G.A. § 36-30-4. *Columbus, Ga. v. Board of Water Comm’rs*, 261 Ga. 219, 403 S.E.2d 791 (1991).

Eligibility for County Offices

1. Residency Requirement

The residency requirements in O.C.G.A. § 45-2-1(7) refer to domicile. *Haggard v. Graham*, 142 Ga. App. 498, 236 S.E.2d 92 (1977).

Ordinarily a jury question. — The question of domicile is a mixed question of law and fact and is ordinarily one for a jury, and

Eligibility for County Offices (Cont'd)**1. Residency Requirement (Cont'd)**

should not be determined by the court as a matter of law except in plain and palpable cases. *Haggard v. Graham*, 142 Ga. App. 498, 236 S.E.2d 92 (1977).

Change in domicile. — If a person leaves the place of domicile temporarily, or for a particular purpose, and does not take up an actual residence elsewhere with the avowed intention of making a change in domicile, that person will not be considered as having changed domicile. *Haggard v. Graham*, 142 Ga. App. 498, 236 S.E.2d 92 (1977).

2. Qualified Voter Requirement

Office of ordinary (now probate judge). — Under application of the provisions of the

Constitution and laws of this state, a person who is not a qualified voter is not eligible to the office of ordinary (now probate judge) of a county. *Lee v. Byrd*, 169 Ga. 622, 151 S.E. 28 (1929).

Partnership ineligible. — Since a partnership cannot be a qualified voter, a partnership may not hold the public office of county auditor as is conceived of in O.C.G.A. § 45-2-1(7). *Lester Witte & Co. v. Rabun County*, 245 Ga. 382, 265 S.E.2d 4 (1980).

Inapplicable to justice of the peace. — A justice of the peace is not a county officer, and the provisions of O.C.G.A. § 45-2-1(7) that no person is eligible to hold a county office who is not “a qualified voter entitled to vote,” has no application to the office of justice of the peace. *Davis v. Mercer*, 48 Ga. App. 191, 172 S.E. 669 (1934).

OPINIONS OF THE ATTORNEY GENERAL**ANALYSIS****GENERAL CONSIDERATION****PERSON CHARGED WITH CRIMES****PERSONS HOLDING OTHER OFFICES****ELIGIBILITY FOR COUNTY OFFICES****General Consideration**

The General Assembly is authorized to provide for membership by nonresidents on the Tobacco Advisory Board. 1969 Op. Att’y Gen. No. 69-495.

Minimum age requirement. — O.C.G.A. § 45-2-1 would not prevent a person under 21 years of age from having that person’s name on the ballot if that one will become 21 on or before the date for assuming office. 1972 Op. Att’y Gen. No. U72-60.

Age requirement for deputy clerks. — Since the authorization in O.C.G.A. § 15-6-59 for appointment of deputies makes a deputy clerk a public officer of this state, under O.C.G.A. § 45-2-1 a deputy clerk of the superior court must be at least 21 years of age. 1958-59 Op. Att’y Gen. p. 43.

The office of highway treasurer is a public office created by the General Assembly. 1945-47 Op. Att’y Gen. p. 626.

A municipal office is a “civil office” within the contemplation of O.C.G.A. § 45-2-1. 1980 Op. Att’y Gen. No. 80-157.

Candidate in both general and special election. — Candidate on ballot in special

congressional primary may not be permitted to run at same time in general election for position in Georgia General Assembly. 1982 Op. Att’y Gen. No. U82-30.

Eligibility for judge of probate court. — For a person to be eligible to hold the office of judge of probate court there must not only be full compliance with the constitutional and statutory residency requirements but also the person must meet the requirements of a qualified voter. 1967 Op. Att’y Gen. No. 67-368.

Person Charged With Crimes

Failure to pay over public moneys. — A judgment against a sheriff-elect for failure to account for and pay over county moneys must be paid before such individual is eligible to hold office, and a county must pay the bond premium on a sheriff regardless of the premium charged. 1976 Op. Att’y Gen. No. U76-58.

Conviction of crime involving moral turpitude. — A person who has been convicted of a crime involving moral turpitude cannot hold public office in this state. 1962 Op. Att’y Gen. p. 131.

Limitation on employment by Board of Regents because of felony involving moral turpitude. — Conviction and sentence for a felony involving moral turpitude does not render an individual ineligible for employment by the Board of Regents unless the position of employment is one which constitutes a position of trust. 1985 Op. Att'y Gen. No. 85-47.

Conviction for transporting stolen automobile. — A person convicted in federal court of transporting a stolen automobile in interstate commerce would be ineligible to hold any civil office. 1962 Op. Att'y Gen. p. 131.

Eligibility of parolees and convicted felons for civil employment. — Even though parolees from the penitentiary and all convicted felons, before pardon, are ineligible for any civil "office," this disability would not extend to mere employment where such employment does not amount to a position of trust. 1968 Op. Att'y Gen. No. 68-35.

Eligibility of work-release prisoners for civil employment. — Work-release prisoners may be employed in any unclassified position that is not a civil office; the same limitation would also apply to their employment in a classified position. 1974 Op. Att'y Gen. No. 74-142.

Persons Holding Other Offices

Persons holding federal office of profit or trust. — Membership on United States Department of Agricultural Stabilization and Conservation Committee is an office of profit or trust under the government of the United States and within the meaning of O.C.G.A. § 45-2-1; any person holding this office would be ineligible to hold any other civil office in this state. 1970 Op. Att'y Gen. No. 70-137.

A city commission member is prohibited from sitting on a draft board, since holders of any civil office are generally prohibited from holding any office of profit or trust under the federal government. 1971 Op. Att'y Gen. No. U71-107.

Representation of criminal defendants. — The obligations of trusteeship imposed upon public officers and public employees do not preclude the representation of a defendant in a criminal proceeding on the grounds of an impermissible conflict of interest from such representation and the

holding of public office and employment. 1982 Op. Att'y Gen. No. U82-44.

Participation in federal program not constituting an office. — Even though additional compensation will be part of the salary of a member of the Uniform Division of the Department of Public Safety for additional work done for a federal drug abuse program, participation in such a program would not be an "office of profit or trust under the government of the United States" as prohibited by O.C.G.A. § 45-2-1(4), primarily because participation would not be an "office" within the meaning of that section. 1972 Op. Att'y Gen. No. 72-69.

A part-time or substitute rural mail carrier is not prohibited by state law from serving as a deputy registrar. 1976 Op. Att'y Gen. No. U76-46.

A postmaster may run and hold an office on a city council. 1983 Op. Att'y Gen. No. 83-30.

Prohibition against holding two state offices. — O.C.G.A. § 45-2-1 is construed to mean that the same person cannot legally hold two state offices of profit or trust; therefore, while members of the Veterans Service Board do not receive a salary, the office is one created by the Constitution and is an office of trust under the Georgia Constitution. A member of the board who has been appointed thereto by the Governor is ineligible to hold another office of the state. 1945-47 Op. Att'y Gen. p. 476.

Employment of director for other duties. — Nothing in O.C.G.A. § 45-2-1 would prohibit the State Treasurer (now director of the Office of Treasury and Fiscal Services) from accepting employment with the state for the performance of duties not required of that office. 1945-47 Op. Att'y Gen. p. 626.

General Assembly members ineligible for county board of education. — Assuming the courts conclude the phrase "either of the several states" is sufficiently broad to include Georgia as well as any of the 49 other states in the union, it would then follow that O.C.G.A. § 45-2-1 renders a person holding an office of profit by virtue of being a member of the General Assembly ineligible to hold the civil office of membership on a county board of education in the absence of express legislative authorization. 1963-65 Op. Att'y Gen. p. 442.

Board memberships not civil offices. — Membership on the governing boards of

Persons Holding Other Offices (Cont'd)

public, nonmunicipal corporations, such as the Ports Authority, are not civil offices within the contemplation of the Georgia Constitution, though such members are clearly fiduciaries of public trust. 1971 Op. Att'y Gen. No. 71-18.

The treasurer of the State Highway Board (now Transportation Board) may also legally hold the office of judge of a city court. 1950-51 Op. Att'y Gen. p. 210.

Acceptance of incompatible position causing automatic vacation of office. — The offices of honorary consul and member of the Board of Commissioners of the Department of Industry and Trade are incompatible, and the acceptance of the position of honorary consul would automatically vacate the position on the Board of Commissioners. 1968 Op. Att'y Gen. No. 68-147.

The offices of vice chairman of the Board of Commissioners of the Department of Industry and Trade and honorary consul in Atlanta for the government of Japan are incompatible, and the acceptance of the position of consul would automatically vacate the position on the Board of Commissioners. 1969 Op. Att'y Gen. No. 69-93.

A judge of the superior court may hold office as a member of the county board of education. 1954-56 Op. Att'y Gen. p. 180.

Resignation not necessary to qualify as candidate for another office. — A solicitor general (now district attorney) would not have to resign that office in order to qualify as a candidate for the office of superior court judge. 1967 Op. Att'y Gen. No. 67-77.

Justice of peace holding office of municipal mayor. — There is apparently no general law of this state which would prohibit a justice of the peace from also holding the office of mayor of a municipality. 1957 Op. Att'y Gen. p. 53.

A justice of the peace is not ineligible under O.C.G.A. § 45-2-1 to hold office of mayor of a municipality unless prohibited by municipal charter. 1945-47 Op. Att'y Gen. p. 79.

A justice of the peace may also act as mayor of a municipality in the absence of a contrary provision in the charter of a municipality. 1948-49 Op. Att'y Gen. p. 478.

Person may hold county and municipal office unless prohibited by municipal charter. — Unless the municipal charter prohibits such, a person can hold a county office

and a municipal office. 1950-51 Op. Att'y Gen. p. 336.

Construing O.C.G.A. §§ 45-2-2 and 45-2-1 together, unless the charter of a particular municipal corporation prohibits a county officer from holding a municipal office created under the charter, a person could hold a county office and a municipal office. 1945-47 Op. Att'y Gen. p. 68.

Person may hold both city and county court office. — There is no prohibition against one persons holding both the offices of judge of a city court and ordinary (now probate judge) of a county. 1970 Op. Att'y Gen. No. U70-60.

A sitting magistrate may be a candidate for the office of chief magistrate but would be required to resign former magistrate position before assuming the new office. 1983 Op. Att'y Gen. No. 83-59.

A city councilman may also serve as a magistrate. 1983 Op. Att'y Gen. No. U83-55.

1983 Op. Att'y Gen. No. U83-55, which stated that there was no statutory, constitutional, or common-law prohibition against a person simultaneously holding the offices of magistrate and city councilman, was issued prior to the ratification of Ga. Const. 1983, Art. II, Sec. II, Para. V, which provides that the test for simultaneously holding two offices is specific authorization, rather than prohibition; and since there is no law specifically authorizing a person to simultaneously hold the offices of magistrate and city councilman, a chief magistrate could not hold office as chief magistrate while seeking election to the city council. 1985 Op. Att'y Gen. No. U85-41.

Federal attorney/hearing examiner cannot serve simultaneously as part-time associate magistrate. — An attorney/hearing examiner for the United States Merit Systems Protection Board may not simultaneously serve as a part-time associate magistrate since the examiner would be exercising discretion vested in the board for the benefit of the public, and thus would be subject to the same disqualification contemplated by O.C.G.A. §§ 45-2-1(4) and 45-3-1(4) as a member of the board, despite technical status as an "employee." 1985 Op. Att'y Gen. No. U85-12.

Armed forces member ineligible to hold municipal office. — Enlisted member of regular component of armed forces is ineligible to hold elected municipal office. 1980 Op. Att'y Gen. No. 80-157.

Military personnel on terminal leave as peace officers. — Members of the armed forces of the United States on terminal leave may be employed and certified as peace officers, but such members of the armed forces would be ineligible to hold certain law enforcement positions, such as sheriff, which are clearly civil offices. 1989 Op. Att'y Gen. 89-30.

Eligibility for County Offices

The proviso in O.C.G.A. § 45-2-1(7) was enacted to change the result of *Bower v. Avery*, 172 Ga. 272, 159 S.E. 10 (1931), i.e., a person would not be eligible to be elected or appointed as county school superintendent where that person was a bona fide citizen of that county for two years even though the person resided and voted within the corporate limits of an independent school district located in said county. 1954-56 Op. Att'y Gen. p. 200.

Judges not considered county officers. — Historically, judges serving in the state judicial system have not been considered county officers under O.C.G.A. § 45-2-1. 1978 Op. Att'y Gen. No. U78-8.

Qualifications of county school superintendent. — In addition to the qualifications of former O.C.G.A. § 20-2-102 (now see O.C.G.A. § 20-2-101) a county school superintendent, being a county officer within the meaning of O.C.G.A. § 45-2-1(7) must have been a citizen of the county for a period of two years prior to the election and a qualified voter in the county entitled to vote. 1958-59 Op. Att'y Gen. p. 110.

Residents eligible for office of county school superintendent. — In a county where there is an independent city school system, a resident of the area included within the

independent district is eligible to be a candidate for the office of county school superintendent in the primary and general election. 1963-65 Op. Att'y Gen. p. 225.

Local school board members. — Residency requirements for the election of local school board members cannot be established by board bylaws. 1997 Op. Att'y Gen. No. U97-25.

Residents eligible for reelection. — If, after election to the office of county school superintendent, the superintendent should move into the area included within the independent district, the superintendent will then be eligible to run for office again. 1963-65 Op. Att'y Gen. p. 225.

Residency in political subdivision. — A candidate for the office of county commissioner must be a resident of the county for a period of 24 months [now 12 months] prior to election, but does not have to reside in the commission district from which the candidate seeks election for a period of 24 months [now 12 months] prior to election. 1986 Op. Att'y Gen. No. 86-23.

Local law residency requirements for candidates unenforceable. — The provisions of a local act establishing a requirement that candidates for the Board of Commissioners of Clay County be residents of the commissioner districts from which they are seeking election for a period of at least five years immediately preceding the date of the election is unenforceable as being a local act in derogation of general law. 1984 Op. Att'y Gen. No. U84-31.

A county was not authorized to establish more stringent residency requirements for the election of county commissioners than the one-year requirement of O.C.G.A. § 45-2-1. 1997 Op. Att'y Gen. No. U97-27.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 53 et seq., § 70 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 15-34.

ALR. — Incompatibility of offices or positions in the military and in the civil service,

26 ALR 142; 132 ALR 254; 147 ALR 1419; 148 ALR 1399; 150 ALR 1444.

Unfitness as affecting right to restoration by mandamus to office from which one has been illegally removed, 36 ALR 508.

Payment of salary to de facto officer as defense to action or proceeding by de jure

officer for salary, 55 ALR 997; 64 ALR2d 1375.

Officer holding over without authority after expiration of his term as a de facto officer, 71 ALR 848.

Policemen as public officers, 84 ALR 309; 156 ALR 1356.

Time as of which eligibility or ineligibility to office is to be determined, 88 ALR 812; 143 ALR 1026.

Other public offices or employments within prohibition as regards judicial officers of constitutional or statutory provis against holding more than one office, 89 ALR 1113.

Right of de facto officer to salary or other compensation annexed to office, 93 ALR 258; 151 ALR 952.

Distinction between office and employment, 93 ALR 333; 140 ALR 1076.

De jure office as condition of a de facto officer, 99 ALR 294.

Effect of election to or acceptance of one office by incumbent of another where both cannot be held by same person, 100 ALR 1162.

Status as de jure public office of one appointed by a de facto office or body or by a body which included a de facto mem whose vote or consent was necessary to the appointment, 106 ALR 1324.

Right of Civil Service Commission to prescribe maximum or minimum age requirements for candidates for positions or promot in civil service, 122 ALR 1452.

Presumption and burden of proof as to one's status as a de facto officer upon which validity or effect of his act depends, 161 ALR 967.

Constitutionality of statute requiring, or limiting, selection or appointment of public officers or agents from memb of a political party or parties, 170 ALR 198.

Payment of salary to de facto officer as defense to action or proceeding by de jure officer for salary, 64 ALR2d 1375.

What constitutes conviction within statutory constitutional provision making convicting of crime ground of disqualification for, removal from, or vacancy in, public office, 71 ALR2d 593.

Incompatibility, under common-law doctrine, of office of state legislator and position or post in local political subdivision, 89 ALR2d 632.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office, 39 ALR3d 303.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

Pardon as restoring public office or license or eligibility therefor, 58 ALR3d 1191.

Validity of requirement that candidate or public officer has been resident of governmental unit for specified period, 65 ALR3d 1048.

Validity of age requirement for state public office, 90 ALR3d 900.

Validity, construction and application of regulation regarding outside employment of governmental employees or officers, 94 ALR3d 1230; 62 ALR5th 671.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 ALR4th 702.

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office, 10 ALR5th 139.

What constitutes conviction within statutory or constitutional provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office, 11 ALR5th 52.

45-2-2. Person to hold only one county office; commissioned officer not to be deputy for another.

No person shall hold, in any manner whatever, or be commissioned to hold more than one county office at one time, except by special enactment of the General Assembly; nor shall any commissioned officer be deputy for any other commissioned officer, except by such special enactment. (Ga. L. 1890-91, p. 102, § 1; Civil Code 1895, § 224; Civil Code 1910, § 259; Code 1933, § 89-103; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

County coroner not prohibited from holding office of constable. — A constable is not a county officer; and therefore a coroner, as a county officer, is not, by virtue of O.C.G.A. § 45-2-2, prohibited from holding the office of constable. *McBrien v. Starkweather*, 43 Ga. App. 818, 160 S.E. 548 (1931).

Consolidated government officers. — A provision in the charter granting authority to a consolidated government to redefine membership of a municipal board of water commissioners did not grant authority to appoint a city council member to the board, where such appointments constituted a conflict of interest under O.C.G.A. § 36-30-4. *Columbus, Ga. v. Board of Water Comm'rs*, 261 Ga. 219, 403 S.E.2d 791 (1991).

Deputy sheriff could not serve as school board member for the same county. *Black v. Catoosa County Sch. Dist.*, 213 Ga. App. 534, 445 S.E.2d 340 (1994).

County coroner illegally commissioned as deputy sheriff of county. — A person commissioned as coroner of a county cannot afterwards during that person's term be legally commissioned as a deputy sheriff of the county, in the absence of the authority of a special legislative enactment, and where, in the absence of such authority, a person, after having been commissioned as coroner and during that term, has been appointed and commissioned as a deputy sheriff for the county, the appointment and commission as a deputy sheriff are illegal, and that person's official status is that of coroner only. *Carter v. Veal*, 42 Ga. App. 88, 155 S.E. 64 (1930).

Cited in *Smith v. Ellabelle-Eldora Sch. Dist.*, 40 Ga. App. 561, 150 S.E. 454 (1929); *Casey v. McElreath*, 177 Ga. 35, 169 S.E. 342 (1933).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION SPECIFIC OFFICES

General Consideration

Construction of common law. — At common law, one could simultaneously hold two public offices unless the two were incompatible, and incompatibility existed when performance of duties of one office interfered with performance of duties of the other. 1981 Op. Att'y Gen. No. U81-6.

Prohibition against simultaneously holding two county offices. — O.C.G.A. § 45-2-2 is a direct prohibition against an individual holding two county offices at the same time. 1965-66 Op. Att'y Gen. No. 65-89.

O.C.G.A. § 45-2-2 prohibits simultaneous holding of two county offices, or one county officer being deputy to another. 1981 Op. Att'y Gen. No. U81-6.

A special enactment may authorize a plurality of offices, and since O.C.G.A. § 45-2-2 itself contemplates a special enactment, such an enactment may be made without violating the constitutional prohibition against enactment of special laws where provision has been made by general law. 1971 Op. Att'y Gen. No. U71-34.

Time of creation of county office not controlling. — The general law that members of county boards of tax assessors are ineligible to serve on county boards of education is applicable to a county, even though the county school system was created prior to adoption of the Constitution of 1877. 1962 Op. Att'y Gen. p. 58.

"County officers" defined. — In a technical sense, the term "county officers" includes only the "county officers" referred to in Ga. Const. 1976, Art. IX, Sec. I, Para. VIII (see Ga. Const. 1983, Art. IX, Sec. I, Para. III), i.e., those who are elected by the qualified voters of their respective counties and hold office for four years. 1958-59 Op. Att'y Gen. p. 146.

Ordinarily, unless there is some special statute, a county police officer does not come within the term of one holding a county office. The county office within the purview of O.C.G.A. § 45-2-2 has been held to be an office created by law for a term of four years and elected by the people of the county. 1957 Op. Att'y Gen. p. 20.

General Consideration (Cont'd)

An appointed official is not a county officer for purposes of O.C.G.A. § 45-2-2. 1981 Op. Att'y Gen. No. U81-6.

No disqualification from running for another office. — O.C.G.A. § 45-2-2 does not say that a person holding one office shall be disqualified to be elected to another, but merely says that a person may not hold two such offices at the same time; the effect of this language is that a person holding one office is not disqualified from running for another, but on election to the latter office, that person automatically forfeits the first. 1958-59 Op. Att'y Gen. p. 146.

Qualifying as candidate for another office not prohibited. — Although O.C.G.A. § 45-2-2 declares that no person shall hold two county offices, it appears that qualifying as a candidate for the office of ordinary (now judge of probate court) while serving as a justice of the peace, would not result in placing the candidate in the position of holding two county offices; moreover, a justice of the peace is not a county but a state officer. 1968 Op. Att'y Gen. No. 68-219.

Effect of county officer winning primary nomination for another county office. — A member of the county board of education would be eligible to run in a county primary for the office of county commissioner, since a primary is not an election in the strict sense of the term, and obviously does not result in placing the successful nominee in the position of "holding" an office within the meaning of O.C.G.A. § 45-2-2; however, if the person receives the nomination, that person must resign as a member of the school board prior to qualifying in general election for commissioner. 1958-59 Op. Att'y Gen. p. 146.

Specific Offices

Members of county board of education are ineligible to hold another county office. 1954-56 Op. Att'y Gen. p. 78.

County board of education member may serve on board of registrars. — A person who is a member of the county board of education can also serve on the board of registrars, without violating that provision of law prohibiting a person from holding more than one county office. 1945-47 Op. Att'y Gen. p. 145.

County board of education member may serve as a member of the General Assembly. 1962 Op. Att'y Gen. p. 52.

County board of education member may serve as a justice of the peace. 1948-49 Op. Att'y Gen. p. 499.

Compatible county positions. — There is no violation of O.C.G.A. § 45-2-2 when a person serves simultaneously as a member of the county board of equalization and as a member of the board of voter registration. 1975 Op. Att'y Gen. No. U75-75.

An elected member of a county democratic committee may serve at the same time as a member of the county board of education; membership on the county democratic committee is a political position and not a county office. 1967 Op. Att'y Gen. No. 67-147.

Section not applicable to county employees. — O.C.G.A. § 45-2-2 applies only to county officers as distinguished from county employees, such as county registrar and county land appraiser. 1973 Op. Att'y Gen. No. U73-83.

County employees not barred from holding county offices. — While O.C.G.A. § 45-2-2 prohibits a person from holding more than one county office, there is no state law or state regulation prohibiting a person from holding two positions of employment with a local board of education, and drawing a salary for each position. School bus drivers, teachers and janitors are employees of the local school system; therefore, a person could be employed as a school bus driver and as a janitor. 1957 Op. Att'y Gen. p. 98.

O.C.G.A. § 45-2-2 would not prohibit a person from holding the position of an employee of a county water system and also that of a member of a county board of education. 1963-65 Op. Att'y Gen. p. 438.

A person can serve as both an assistant district attorney of a judicial circuit and a member of a county board of education. 1958-59 Op. Att'y Gen. p. 105.

O.C.G.A. § 45-2-2 inapplicable to school principal or teacher. — A school principal or a public school teacher is a county employee and not a county officer; therefore, O.C.G.A. § 45-2-2 would not apply to a school principal or teacher. 1958-59 Op. Att'y Gen. p. 100.

A teacher of vocational agriculture is a county employee and not a county officer;

therefore, O.C.G.A. § 45-2-2 would not apply to such teacher. 1954-56 Op. Att'y Gen. p. 77.

There is no prohibition which would prevent a teacher from becoming a candidate for a seat on the county board of education. 1968 Op. Att'y Gen. No. 68-231.

Legality of school employee's contract with board of which the employee is a member. — A school principal or a public school teacher could legally serve as a member of the county board of education; however, the legality of a contract of employment entered into by a school principal or teacher with a county board of education of which the said principal or teacher is a member is questionable. 1958-59 Op. Att'y Gen. p. 100.

State employees not barred from holding county offices. — A person in the employ of the state as a professor may occupy a seat on the school board of a county. 1968 Op. Att'y Gen. No. 68-168.

The chairman of a county board of commissioners may be employed as a full-time probation officer by the State Board of Probation. 1968 Op. Att'y Gen. No. 68-21.

A member of a State Agricultural Commodities Commission may simultaneously hold the office of county commissioner. 1976 Op. Att'y Gen. No. U76-30.

There is no legal impediment to a judge of the state court of a county simultaneously serving as juvenile court judge for a judicial circuit which embraces several counties including the county for which that person is a state court judge. 1976 Op. Att'y Gen. No. U76-56.

Court reporter receiving allowance under O.C.G.A. § 15-14-6 may qualify for office of justice of peace. — Person designated as official court reporter, who receives state allowances pursuant to O.C.G.A. § 15-14-6, may qualify and campaign for office of justice of the peace. 1980 Op. Att'y Gen. No. U80-23.

Justice of the peace not barred from holding office of county commissioner. — Justice of the peace, not being a county official, is not barred from holding at same time office of county commissioner. 1962 Op. Att'y Gen. p. 53.

Justice of the peace may be member on a political party's county executive committee. — There is no prohibition against a justice of the peace at the same time holding mem-

bership on the county democratic executive committee. 1962 Op. Att'y Gen. p. 50.

A coroner is a county officer and may hold a state office, e.g., that of constable or justice of the peace. 1954-56 Op. Att'y Gen. p. 55.

Coroner may be appointed constable. — There is no statutory provision preventing the appointment of a coroner to act as constable, provided that the constable is appointed under the conditions and procedure provided in the Code for the appointment of constables under certain conditions. 1957 Op. Att'y Gen. p. 20.

Coroner may act as county police officer. — It does not appear that a coroner would be prohibited under O.C.G.A. § 45-2-2 from acting as a county police officer. 1957 Op. Att'y Gen. p. 20.

Coroner may not act as deputy sheriff. — County coroner may not legally hold office as deputy sheriff. 1954-56 Op. Att'y Gen. p. 54.

It appears that offices of deputy coroner and deputy sheriff are incompatible because of inconsistent duties under Art. 2 of Ch. 16 of this title; thus, a deputy sheriff may not also serve as deputy coroner. 1981 Op. Att'y Gen. No. U81-6.

Coroner may not hold county office. — A coroner, being a county officer, could not hold the office of deputy sheriff or any other county office or deputy to a county officer, but could hold a job as a municipal policeman or as a notary public ex officio justice of the peace or constable. 1958-59 Op. Att'y Gen. p. 38.

Coroners and deputy coroners. — Coroners and deputy coroners may not serve as deputy sheriffs or city police officers. 1997 Op. Att'y Gen. No. U97-18.

Deputy sheriff not to serve as county coroner. — A person legally commissioned as a deputy sheriff cannot simultaneously be commissioned and serve as coroner of the county unless the General Assembly has specifically provided for same. 1969 Op. Att'y Gen. No. 69-356.

Incompatible county offices. — Under O.C.G.A. § 45-2-2 a person could not hold the office as a member of the county board of public welfare and as a member of the county board of education. 1945-47 Op. Att'y Gen. p. 648.

A member of the county board of commissioners of roads and revenues may not be

Specific Offices (Cont'd)

come county school superintendent. 1945-47 Op. Att'y Gen. p. 147.

A deputy sheriff cannot serve as a member of a county board of education. 1965-66 Op. Att'y Gen. No. 65-78.

The chairman of the commissioners may not serve as county convict warden. 1960-61 Op. Att'y Gen. p. 55.

Tax commissioner prohibited from serving as assistant to probate judge. — O.C.G.A. § 45-2-2 precludes the appointment of a tax commissioner as an assistant to the probate judge for the purpose of conducting an election. 1975 Op. Att'y Gen. No. 75-90.

The judge of probate court cannot legally hold the office of superior court clerk; however, if a vacancy occurs at a time other than during the term of the superior court and it results from an emergency and the ordinary

(now probate judge) cannot otherwise fill it in the manner described in O.C.G.A. § 15-6-54, the probate judge may act as clerk. 1974 Op. Att'y Gen. No. 74-42.

Judge of probate court may not hold the office of county attorney. — A judge of probate court of a county is not qualified also to hold the public office of county attorney; it is self-evident that the duties of the two public offices in many instances would be conflicting and would be incompatible. 1962 Op. Att'y Gen. p. 61.

Service as volunteer firefighter. — Dual service as a volunteer firefighter and member of a city council or county commission does not violate O.C.G.A. §§ 36-30-4 or 45-2-2; however, cities and counties must determine for themselves, based on the circumstances, whether a common law conflict of interest exists. 1998 Op. Att'y Gen. No. U98-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 57 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 27.

ALR. — Effect of election to or acceptance of one office by incumbent of another where both cannot be held by same person, 100 ALR 1162.

45-2-3. Persons failing to obtain commissions ineligible for reelection.

Persons who, after an election, fail to comply with all the prerequisites of the law in order to obtain commissions or certificates to discharge the duties of their office shall, by reason of such failure, be ineligible for reelection to the same office at the next election. (Orig. Code 1863, § 127; Code 1868, § 122; Code 1873, § 131; Code 1882, § 131; Civil Code 1895, § 225; Civil Code 1910, § 260; Code 1933, § 89-104.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 128 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 48.

45-2-4. Officers to reside in state, discharge duties until successor commissioned, and have seal.

All officers of this state shall reside in this state at such places as are designated by law and shall discharge the duties of their offices until the successors are commissioned and qualified, except that public officers appointed by the Governor and subject to confirmation by the Senate shall not hold over until their successors have been appointed and confirmed;

and all officers whose certificates or records or other papers are admissible in evidence in any court in this state must have and keep an official seal. (Orig. Code 1863, § 128; Code 1868, § 123; Code 1873, § 132; Code 1882, § 132; Civil Code 1895, § 226; Civil Code 1910, § 261; Code 1933, § 89-105; Ga. L. 1982, p. 3, § 45; Ga. L. 1990, p. 8, § 45.)

Cross references. — Governor filling certain vacancies, § 45-12-52.

Law reviews. — For article examining history of recall in Georgia local government

law, and considering future developments, see 10 Ga. L. Rev. 883 (1976).

JUDICIAL DECISIONS

No vacancy created. — The office does not expire at the expiration of said term, but the elected officer holds over until a successor is commissioned and qualified. Holding over prevents vacancy. *Stephenson v. Powell*, 169 Ga. 406, 150 S.E. 641 (1929).

An office is not vacant so long as it is filled by an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it. *Garcia v. Miller*, 261 Ga. 531, 408 S.E.2d 97 (1991).

Superior court judge to serve “until his successor is qualified.” — Previous state constitutions explicitly provided that the term of office for superior court judges “shall be for four years, and until his successor is qualified.” Omission of the phrase “until his successor is qualified” in the 1983 Constitution does not prevent judges from remaining in office after their four-year term of office ends. *Garcia v. Miller*, 261 Ga. 531, 408 S.E.2d 97 (1991).

Because a complete and continuous judicial system is required to ensure that governmental functions continue without interruption, the judicial power of holdover superior court judges remains vested in them until their successors are qualified. *Garcia v. Miller*, 261 Ga. 531, 408 S.E.2d 97 (1991).

Commission not conclusive evidence as to term of office. — A commission issued by the Governor to a duly elected member of the board of education of a county, in which the term of such officer is stated to be for a given number of years and to end on a designated date, is not conclusive evidence of the right of such officer to hold beyond such term and designated date, and does not prevent courts from looking behind the commission and determining, in a proper case, when the term of such officer legally

begins and ends. The statute and not the commission determines the commencement and ending of the term of such officer. *Stephenson v. Powell*, 169 Ga. 406, 150 S.E. 641 (1929).

Board of commissioners to hold over. — Where a local Act was enacted to abolish the board of county commissioners and establish a new board, but the Act failed to provide for an election date for the new members, the members of the board existing at the date of its passage should discharge the duties and functions of their office until the members of the new board are elected and qualified. *Kidd v. Nelson*, 213 Ga. 417, 99 S.E.2d 123 (1957).

The legislature may specify a special procedure to fill vacancies in positions of county commissioners as long as that procedure violates no other constitutional provision. *Smith v. Abercrombie*, 235 Ga. 741, 221 S.E.2d 802 (1975).

Liability on bond continues. — The effect of O.C.G.A. § 45-2-4 is to extend the term of office under the original appointment until a successor has been qualified, with the further effect that liability on an official bond continues where an official elected for a fixed period thereafter holds over, after its expiration, until a successor is appointed. *City of Elberton v. Jones*, 35 Ga. App. 536, 133 S.E. 745 (1926).

While the general rule is that sureties are liable only for a breach of official duty committed by their principal during the term of office for which the bond was given, the effect of O.C.G.A. § 45-2-4 is to extend the term of office under the original appointment until a successor has been qualified, with the further effect that liability on such a bond continues where an official

elected for a fixed period thereafter holds over, after its expiration, until a successor is appointed. *Century Indem. Co. v. Fidelity & Deposit Co.*, 175 Ga. 834, 166 S.E. 235 (1932).

Cited in *Bashlor v. Bacon*, 168 Ga. 370, 147 S.E. 762 (1929); *Wiley v. Douglas*, 168

Ga. 659, 148 S.E. 735 (1929); *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930); *Mitchell v. Pittman*, 184 Ga. 877, 194 S.E. 369 (1937); *Britton v. Bowden*, 188 Ga. 806, 5 S.E.2d 47 (1939); *Roan v. Rodgers*, 201 Ga. 696, 40 S.E.2d 551 (1946); *Brooks v. Malone*, 247 Ga. 314, 275 S.E.2d 653 (1981).

OPINIONS OF THE ATTORNEY GENERAL

No vacancy of office as long as authorized officer exists. — There cannot be a vacancy in an office so long as there is an officer authorized by law to perform its functions. 1958-59 Op. Att'y Gen. p. 107.

Officers not permitted to hold over. — Members of the Professional Standards Commission may not continue to serve past their appointed three-year terms and until their successors are appointed and qualifies; they are public officers subject to O.C.G.A. § 45-2-4, in the absence of express language to the contrary. 1998 Op. Att'y Gen. No. 98-3.

Duty of incumbent to hold over. — Upon the expiration of the term of the incumbent, whose tenure is for a definite term, it is the duty of the incumbent to continue in the discharge of that office until a successor is qualified; the superadded period being a part of the rightful term of office. 1958-59 Op. Att'y Gen. p. 107.

To whom holding over requirement applies. — A county welfare board member whose term has expired can and should hold over and perform the duties of such office until a successor has been duly appointed and qualified. 1948-49 Op. Att'y Gen. p. 466.

As local board of education members are public officers, their terms shall continue until their successors are commissioned. 1975 Op. Att'y Gen. No. 75-15.

Members-elect of a local board of education shall not enter upon the duties of office until qualified, commissioned, and administered the appropriate oaths. An incumbent board member who has been reelected or reappointed may continue to serve as an official member of the board prior to receiving the commission and being administered the appropriate oaths for the new term. 1975 Op. Att'y Gen. No. 75-15.

A justice of the peace must continue in office until a successor is appointed and qualified for taking the oath of office. 1958-59 Op. Att'y Gen. p. 54.

An incumbent soil and water conservation district supervisor continues in office until a successor has been duly elected, sworn in, and commissioned. 1976 Op. Att'y Gen. No. 76-10.

Justices of the peace, constables, and notaries public ex officio justices of the peace act in a hold-over capacity and discharge the duties of their offices until their successors are commissioned and qualified. 1969 Op. Att'y Gen. No. 69-173.

Compensation for holding over period. — A district attorney held in office pending outcome of the election of a successor is entitled to payment for that period. 1969 Op. Att'y Gen. No. 69-361.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 80 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 26.

45-2-5. Municipal or county governments not to require residence as condition of employment.

No municipal or county government in this state shall require as a condition of employment by such government that applicants for employment as officers or employees, or such officers or employees now or

hereafter employed, must reside within the boundaries of the municipality or county. (Ga. L. 1975, p. 1576, § 1.)

Law reviews. — For article discussing effect of *City of Atlanta v. Myers*, 240 Ga. 261, 240 S.E.2d 60 (1977), on limits of municipal government autonomy, see 12 Ga. L. Rev.

805 (1978). For article, “The United States Supreme Court as Home Rule Wrecker,” see 34 Mercer L. Rev. 363 (1982).

JUDICIAL DECISIONS

Ordinance restricting residence held unconstitutional. — Ordinance of the City of Atlanta providing residential requirements for officers and employees of the police and fire bureaus contrary to O.C.G.A. § 45-2-5 is unconstitutional and void under Ga. Const. 1976, Art. I, Sec. II, Para. VII (see Ga. Const. 1983, Art. III, Sec. VI, Para. IV). *City of Atlanta v. Myers*, 240 Ga. 261, 240 S.E.2d 60 (1977).

Ordinance not in conflict with this section. — A city ordinance requiring all public safety personnel to reside within 8.75 miles of city hall, is not in conflict with O.C.G.A. § 45-2-5 because this ordinance does not impose a distance requirement which makes residence within the political subdivision necessary. *Dixon v. City of Perry*, 262 Ga. 212, 416 S.E.2d 279 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Qualifications of voter registrars and deputy registrars established by O.C.G.A. § 21-2-213 are unaffected by O.C.G.A. § 45-2-5, prohibiting counties and municipalities from requiring employees to reside within. 1975 Op. Att’y Gen. No. 75-111.

City of Commerce may not require that city manager be elector of municipality. — See 1986 Op. Att’y Gen. No. U86-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 80 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 26.

45-2-6. Municipal or county governments not to use residence as advantage or disadvantage in administering employee merit system.

A municipal or county government of this state, in using any merit system examination or other type of examination or evaluation of personnel in connection with application for employment, demotion, or discharge of employees or promotion of employees, shall not apply additional points, credits, or other benefits to residents of the municipality or county to give such residents an advantage for the purpose of employment or promotion, or a disadvantage for the purpose of demotion or discharge, over nonresidents solely on the basis of residency. This Code section and Code Section 45-2-5 shall not be construed to prohibit the choice of a resident over a nonresident when both applicants for employment or both employees are equally qualified for the position sought by them or when both employees are equally at fault or ineffective when they are being considered for

demotion or discharge from employment. (Ga. L. 1975, p. 1576, § 2; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted “the” preceding “nonresidents” in the first sentence and revised punctuation in the last sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 80 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, § 26.

45-2-7. Employment of aliens — Prohibited generally; exceptions.

(a) Except as provided in subsections (b) through (d) of this Code section, no department of the state government or any political subdivision thereof shall employ any alien for any purpose until a thorough investigation has been made and it is ascertained that there is no qualified American citizen available to perform the duty desired.

(b) An institution of the University System of Georgia may employ an alien who is attending such institution as a student. Such an institution may employ any other alien for a period of time not to exceed one year or may enter into exchange professorship agreements with institutions, foreign or otherwise, where aliens are involved for a period of time not to exceed one year.

(c) The prohibition of subsection (a) of this Code section shall not apply to the employment of an alien who is not a Communist and who is in this country as a student enrolled in a college or university in this state or in a program of student exchange sponsored or participated in by a college or university in this state, as certified by the dean or registrar thereof.

(d) The prohibitions of subsection (a) of this Code section shall not apply to the employment of aliens licensed under Code Section 43-34-33, relating to the licensing of aliens to practice medicine or pharmacy. (Ga. L. 1937-38, Ex. Sess., p. 189, § 1; Ga. L. 1955, p. 382, § 1; Ga. L. 1968, p. 1244, § 1.)

Cross references. — Rights of aliens generally, § 1-2-11.

OPINIONS OF THE ATTORNEY GENERAL

Application. — O.C.G.A. § 45-2-7 cannot be constitutionally applied to exclude aliens from public employment except to bar them from positions that participate directly in the formulation, execution, or review of broad public policy or from positions where citizenship otherwise bears some rational relationship to the special demands of the particular position. 1976 Op. Att’y Gen. No. 76-74.

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, §§ 1965, 1980, 1989.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 21.

ALR. — Constitutionality of enactment or regulation forbidding or restricting employment of aliens in public employment or on public works, 38 ALR3d 1213.

45-2-8. Employment of aliens — Official subject to removal for violation.

Any department head or any official of any political subdivision in this state who violates Code Section 45-2-7 shall be subject to removal from office by the Governor of the state. (Ga. L. 1937-38, Ex. Sess., p. 189, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Illegal employment of aliens where qualified American available. — It would not be legal to contract with an alien whose services are desired for consultation in the develop-

ment of certain systems and in preparation of a policy and procedures manual if there is a qualified American to do the job. 1967 Op. Att'y Gen. No. 67-325.

RESEARCH REFERENCES

Am. Jur. 2d. — 3B Am. Jur. 2d, Aliens and Citizens, §§ 1965, 1980, 1989.

ALR. — Conclusiveness of Governor's decision in removing officers, 52 ALR 7; 92 ALR 998.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-2-9. State agencies not to discriminate in employment against servicemen's wives.

(a) No department, agency, or board of the state shall deny employment with such department, agency, or board to a wife whose husband is on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the national guard, merely because she is a wife of a member of the armed forces.

(b) This Code section shall not be construed to require a department, agency, or board of the state to employ any person who is not qualified for such employment or to employ any person if no opening is available for the position applied for by such person. This Code section is intended only to prevent departments, agencies, and boards of the state from discriminating against wives of servicemen in the opportunity of securing employment with such departments, agencies, and boards. (Ga. L. 1970, p. 169, § 1.)

ARTICLE 2

VETERANS' CIVIL SERVICE PREFERENCE

Cross references. — Commissioner of veterans service, preference to veterans, § 38-4-9. Point credit for veterans taking

examinations given by state examining boards, § 43-1-9 et seq.

45-2-20. “Armed conflict” defined.

As used in this article, the term “armed conflict” means armed military intervention beyond the limits of the United States, as well as any confrontation of the armed forces of the United States with foreign nationals in which actual hostilities erupt. (Ga. L. 1969, p. 642, § 3.)

Cross references. — “War veterans” defined, § 38-4-50.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 37, 39, 62.

ALR. — Character of service or connection with military or naval service necessary

to entitle one to benefit of veterans’ preference in relation to civil service, 87 ALR 1002.

45-2-21. Veteran entitled to additional five points on civil service examination score.

(a) Any veteran who has served on active duty as a member of the armed forces of the United States for a period of more than 180 days, not counting service under an initial period of active duty for training under the six-months’ reserve or National Guard programs, any portion of which service occurred during a period of armed conflict in which any branch of the armed forces of the United States engaged, whether under United States command or otherwise, and who was honorably discharged therefrom shall be entitled to and shall have five points added to his passing score on any competitive civil service examination for employment with the state government or any political subdivision thereof; provided, however, that such veteran is not already eligible for veterans preference under Article IV, Section III, Paragraph II of the Constitution of Georgia.

(b) Notwithstanding the 180 day minimum active duty requirement of subsection (a) of this Code section, the five-point preference granted to veterans under said subsection shall apply to any member of the National Guard or armed forces reserve who served on active duty for any length of time during any portion of the time the armed forces of the United States were engaged in Operation Desert Shield or Operation Desert Storm if such service occurred in an area of imminent danger as defined by the United States Department of Defense as follows:

“Area of imminent danger” means:

- (1) The Persian Gulf;
- (2) The Red Sea;
- (3) The Gulf of Oman;

(4) The portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude;

(5) The Gulf of Aden; and

(6) The total land area of Saudi Arabia, Kuwait, Iraq, Yemen, Oman, Bahrain, Qatar, and the United Arab Emirates. (Ga. L. 1969, p. 642, § 1; Ga. L. 1983, p. 3, § 61; Ga. L. 1984, p. 22, § 45; Ga. L. 1992, p. 2087, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “National Guard” was substituted for “national guard” in subsection (a).

Law reviews. — For article, “Veterans’ Preferences in Public Employment: Unconstitutional Gender Discrimination?” see 26 Emory L.J. 13 (1977).

JUDICIAL DECISIONS

Justification for preference. — The veterans’ hiring preference has traditionally been justified as a measure designed to reward veterans for the sacrifice of military service, to ease the transition from military to civil-

ian life, to encourage patriotic service, and to attract loyal and well-disciplined people to civil service occupations. *Dash v. Department of Human Resources*, 153 Ga. App. 633, 266 S.E.2d 305 (1980).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 37, 62.

ALR. — Character of service or connection with military or naval service necessary to entitle one to benefit of veterans’ preference statute in relation to civil service, 87 ALR 1002.

Constitutionality of state veterans’ public employment preference laws, 161 ALR 494.

Rights of non-civil service public employees, with respect to discharge or dismissal, under state veterans’ tenure statutes, 58 ALR2d 960.

45-2-22. Disabled veteran entitled to additional ten points on civil service examination score.

Any veteran, as provided in Code Section 45-2-21, who has at least a 10 percent service connected disability, as rated and certified by the United States Department of Veterans Affairs, shall be entitled to and shall have ten points added to his passing score on any competitive civil service examination, said ten-point preference being in lieu of and not in addition to any other similar preference accorded by law. (Ga. L. 1969, p. 642, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 45, § 1.)

JUDICIAL DECISIONS

Justification for preference. — The veterans’ hiring preference has traditionally been justified as a measure designed to reward veterans for the sacrifice of military service, to ease the transition from military to civil-

ian life, to encourage patriotic service, and to attract loyal and well-disciplined people to civil service occupations. *Dash v. Department of Human Resources*, 153 Ga. App. 633, 266 S.E.2d 305 (1980).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 37, 39, 62.

ALR. — Character of service or connection with military or naval service necessary to entitle one to benefit of veterans' prefer

statute in relation to civil service, 87 ALR 1002.

Constitutionality of state veterans' public employment preference laws, 161 ALR 494.

ARTICLE 3

PHYSICAL EXAMINATION OF STATE EMPLOYEES

Cross references. — Medical information, § 24-9-40 et seq. Power of Department of Human Resources to require reporting of certain diseases and injuries, § 31-12-2. Disclosure of medical records and other medical information pertaining to the mentally ill, the mentally retarded, alcoholics, etc.

§§ 37-3-166, 37-4-125, 37-7-166. Medical and physical examination program: Prospective state employees, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of State Personnel Board, Chapter 478-4.

45-2-40. Employees to furnish certificate of physical fitness for employment.

No person who is otherwise qualified shall be employed in any capacity by the state or any department or agency thereof unless the person is certified as meeting the standards of medical and physical fitness by a qualified medical practitioner within a prescribed number of calendar days after the date of an offer of employment. However, the State Personnel Board may provide for standards of medical and physical fitness for some positions that require only certification by the prospective employee and such certification may be accepted by the respective employing department without further assessment by a medical practitioner. (Ga. L. 1956, p. 808, § 1; Ga. L. 1960, p. 189, § 1; Ga. L. 1975, p. 76, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1996, p. 1094, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

The only exception to O.C.G.A. § 45-2-40 is a temporary employee who is employed for a period not exceeding 45 days, and who is not reemployed more than once for a similar period within any 12 consecutive

months; all other employees must have a preemployment physical examination as a prerequisite to employment by the state. 1963-65 Op. Att'y Gen. p. 678 (rendered prior to 1996 amendment).

RESEARCH REFERENCES

Am. Jur. 2d. — Am. Jur. 2d, New Topic Service, Americans with Disabilities Act, § 1 et seq., § 281 et seq.

45-2-41. Committee of doctors to develop fitness standards; licensed physician to make physical examination; contracts for assessments of employees; fee for committee members and consultants; certification.

(a) The commissioner of personnel administration, subject to the approval of the State Personnel Board, shall appoint up to five doctors of medicine licensed by the state and other specialists, as appropriate, to develop standards of medical and physical fitness required for persons about to be appointed to positions in the state service. Such standards shall be related to the duties required of specific positions in the state service. The commissioner of personnel administration shall develop the forms to secure the information needed to determine if prospective employees meet the medical and physical fitness standards required to perform the essential functions of the relevant position.

(b) If a physical examination is required by the standards of medical and physical fitness, a licensed medical practitioner may perform the assessment and report the findings to a physician in the employ of or under contract with the state or respective employing department. The licensed medical practitioner may be of the applicant's choice and at the applicant's expense or may be a licensed physician in the employ of or under contract with the state or respective employing department. When the licensed physician is in the employ of or under contract with the state or respective employing department, the assessment and findings shall be made to the respective department and shall be final, except as provided in the State Personnel Board rules.

(c) The commissioner of personnel administration may, through a competitive proposal process, enter into an agreement on behalf of the departments to contract with medical practitioners for the purpose of conducting assessments for medical and physical fitness as required by the standards of medical and physical fitness. In such case, each department may use the selected contractor as an expense of a departmental employee selection process or may recommend that prospective employees seek the examination at the contractor's site at the prospective employee's expense. If the prospective employee chooses to use a medical practitioner other than one selected by the department or under contract with the state on behalf of the department, the findings and recommendations of such other practitioner shall be furnished to the medical practitioner selected by the department or under contract with the state on behalf of the department for final determination of the medical and physical fitness of the prospective employee. Expenses for the medical practitioner under contract with the state on behalf of the department shall be paid by the respective employing department based upon the services provided by such medical practitioner.

(d) The State Personnel Board is authorized to establish a fee and make payment of same to the consultants appointed by the commissioner of

personnel administration for services rendered in the development of standards of medical and physical fitness for state employees; provided, however, that no state employee shall receive additional compensation for services as a consultant for developing the standards of medical and physical fitness.

(e) The certification required by Code Section 45-2-40 shall be completed as required in the rules of the State Personnel Board; provided, however, that if a physical examination is required by the standards for medical and physical fitness, the physical examination shall be completed prior to the date of appointment, and the reporting of results shall occur within a prescribed number of calendar days from the date of appointment. (Ga. L. 1956, p. 808, § 2; Ga. L. 1960, p. 189, § 2; Ga. L. 1962, p. 541, §§ 1-3; Ga. L. 1975, p. 76, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1996, p. 1094, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — Legislative intent in enactment of O.C.G.A. § 45-2-41 is to ensure that prospective employee will be physically capable of carrying out duties of appointment. In addition, O.C.G.A. § 45-2-41 protects prospective employee from possible harmful effects associated with employment, which may arise by virtue of a particular preexisting physical malady. O.C.G.A. § 45-2-41 also affords protection to the state and its agencies from potential liability under workers' compensation laws for conditions arising after employment, but caused in whole or in part by preexisting physical conditions. 1981 Op. Att'y Gen. No. 81-23.

The General Assembly intended use of state-employed physicians to greatest extent possible. 1981 Op. Att'y Gen. No. 81-23 (rendered prior to 1996 amendment).

Prospective employee need not employ and pay private physician for preemployment physical. 1981 Op. Att'y Gen. No. 81-23 (rendered prior to 1996 amendment).

Payment by Department of Transportation of costs of preemployment physical examinations. — Department of Transportation is authorized, via appropriate contractual arrangements, to pay costs of preemployment physical examinations directly to local physicians appointed by Department of Human Resources. The Department of Transportation also may reimburse Department of Human Resources, via appropriate contractual arrangements, for costs of

preemployment physical examinations paid by Department of Human Resources to local physicians appointed by it. 1981 Op. Att'y Gen. No. 81-23.

Examination to be performed by any licensed physician. — O.C.G.A. § 45-2-41 does not state that the physician has to be licensed in the State of Georgia; therefore, as long as the examining physician is "licensed" the requirements of law are met. 1963-65 Op. Att'y Gen. p. 598.

A physical examination of an employee must be completed before disbursement of salary to an affected employee; however, the report on the physical examination may be filed with the appointing authority by the examining physician after the disbursement of salary within a prescribed number of calendar days as fixed by the State Personnel Board; this means that a new employee can be officially appointed and begin actual performance of duties prior to the completion of the physical examination, but that the physical examination is to be completed before the disbursement of any salary; a salary check may not be given to the employee prior to the completion of the physical examination, and the number of days fixed by the Merit System is only with reference to the report of the physical examination. 1963-65 Op. Att'y Gen. p. 499 (rendered prior to 1996 amendment).

Effect of disbursements prior to completion of physical examination. — The Merit System cannot certify to the correctness of

payroll of the Department of Human Resources in its customary post-audit if the payroll shows disbursements prior to the completion of the physical examination, as

this would not be in compliance with O.C.G.A. § 45-2-41. 1963-65 Op. Att'y Gen. p. 499 (rendered prior to 1996 amendment).

45-2-42. State department or agency to furnish standards of fitness of positions.

The state department or agency shall furnish to the applicant the standards of medical and physical fitness for the position for which applied in such manner as to enable a medical practitioner to ascertain the physical capacity of the applicant to fulfill the requirements of employment. (Ga. L. 1956, p. 808, § 3; Ga. L. 1975, p. 76, § 3; Ga. L. 1996, p. 1094, § 3.)

45-2-43. Examining medical practitioner to make report; conditions impairing prescribed duties; consent for distribution of additional confidential medical information; reports; confidentiality of files.

If a physical examination is required, the examining medical practitioner shall make a report certifying that the prospective employee has been examined and certified as not having any condition that would impair the fulfillment of the prescribed duties of the employment. However, if a condition exists which would impair the fulfillment of the prescribed duties, the medical practitioner shall identify such condition, the employing agency shall provide reasonable accommodation to the extent required by the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and the medical practitioner shall certify that the prospective employee, with the accommodation, meets the standards of medical and physical fitness for the position. Additional confidential medical information should be given only with the consent of the applicant. The examining medical practitioner shall complete the necessary forms and findings in accordance with the rules of the State Personnel Board. All such medical information shall be retained in a separate, confidential file and not as a part of the personnel file. (Ga. L. 1956, p. 808, § 4; Ga. L. 1975, p. 76, § 4; Ga. L. 1996, p. 1094, § 3; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "Section 12101, et seq." for "Sec. 12101 et seq."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a period was deleted at the end of the next to last sentence.

45-2-44. State Personnel Board to adopt rules and regulations; expenditure of funds.

The State Personnel Board, subject to the approval of the Governor, shall adopt and promulgate rules and regulations for the administration of this article. The board, through the commissioner of personnel administration, is authorized to expend allocated funds for the necessary forms and other

incidental administrative expenses in effectuating this article. All other expenses shall be borne by the prospective employee or the respective employing department in accordance with the rules of the board. (Ga. L. 1956, p. 808, § 5; Ga. L. 1960, p. 189, § 3; Ga. L. 1996, p. 1094, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 87-102.

45-2-45. Applicability of article.

This article shall not apply to department heads, temporary employees, other categories of employees of the state as defined by the State Personnel Board, or to students in the University System of Georgia in the employ of the state, nor shall it apply to any present employee. As used in this Code section, the term “temporary employee” means a person whose period of employment is of short duration or is part time as defined by the State Personnel Board. (Ga. L. 1956, p. 808, § 6; Ga. L. 1960, p. 189, § 4; Ga. L. 1962, p. 541, § 4; Ga. L. 1996, p. 1094, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Application to employees in the University System of Georgia. — The exemption of O.C.G.A. § 45-2-45 applies only to the heads of state departments and not the various subdivisions, subdepartments, and branches of departments of state government; therefore, as it applies to the department, the

Regents of the University System of Georgia, the exemption would only apply to the chancellor and not to presidents of the various units of the department, nor various administrative and academic departments and subdivisions thereof. 1963-65 Op. Att’y Gen. p. 598 (rendered prior to 1996 amendment).

CHAPTER 3

OFFICIAL OATHS AND COMMISSIONS

Article 1		Sec.	
Official Oaths			
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		45-3-14.	Loyalty oath — Person to be taken from payroll for failure to sign oath.
45-3-4.	Filing of oaths — Generally.	45-3-15.	Loyalty oath — Proceeding for false swearing when oath violated.
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45-3-7.	Oaths of deputies.		
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Article 2

Commissions

ARTICLE 1

OFFICIAL OATHS

45-3-1. Oaths required in addition to oath of office and constitutional oath.

Every public officer shall:

- (1) Take the oath of office;
- (2) Take any oath prescribed by the Constitution of Georgia;
- (3) Swear that he or she is not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof;
- (4) Swear that he or she is not the holder of any office of trust under the government of the United States, any other state, or any foreign state which he or she is by the laws of the State of Georgia prohibited from holding;
- (5) Swear that he or she is otherwise qualified to hold said office according to the Constitution and laws of Georgia;
- (6) Swear that he or she will support the Constitution of the United States and of this state; and

(7) If elected by any circuit or district, swear that he or she has been a resident thereof for the time required by the Constitution and laws of this state. (Orig. Code 1863, § 134; Code 1868, § 129; Code 1873, § 139; Code 1882, § 139; Civil Code 1895, § 234; Civil Code 1910, § 269; Code 1933, § 89-302; Ga. L. 1986, p. 168, § 1; Ga. L. 1998, p. 510, § 1.)

Cross references. — Disqualification from public office of holders of unaccounted-for public money due state, Ga. Const. 1983, Art. II, Sec. II, Para. III and § 45-2-1. Criminal penalty for violation of oath by public officer, § 16-10-1.

Law reviews. — For article, “The Georgia Bill of Rights: Dead or Alive?,” see 34 Emory L.J. 341 (1985).

JUDICIAL DECISIONS

Oath not required of municipal officers. — O.C.G.A. § 45-3-1 applies to officers commissioned by the Governor, and not to municipal officers not commissioned by the Governor. *Brewer v. Johnson*, 184 Ga. 806, 193 S.E. 778 (1937).

Unless required by city charter or other statute. — An oath by a municipal officer is

not necessary in the absence of any requirement thereof by the city charter or some other statute. *Brewer v. Johnson*, 184 Ga. 806, 193 S.E. 778 (1937).

Cited in *McDuffie v. Perkerson*, 178 Ga. 230, 173 S.E. 151 (1933); *Morgan v. Crow*, 183 Ga. 147, 187 S.E. 840 (1936).

OPINIONS OF THE ATTORNEY GENERAL

Oath required of members of county board of health. — Members of the county board of health are public officers within the meaning of O.C.G.A. §§ 45-3-16 and 45-3-1 and are required to take the oath as prescribed by O.C.G.A. § 45-3-11. 1963-65 Op. Att’y Gen. p. 432.

Oath required of local board of education member. — A local board of education member is required to take the oath specified in O.C.G.A. § 45-3-1. Until the member takes the oath, the local board member is not to enter upon the duties of office. 1975 Op. Att’y Gen. No. 75-15.

Reelected or reappointed board member may continue to serve prior to taking oath for new term. — Members-elect of a local board of education shall not enter upon the duties of office until qualified, commissioned, and administered the appropriate oaths. An incumbent board member who has been reelected or reappointed may continue to serve as an official member of the board prior to receiving the commission and

being administered the appropriate oaths for the new term. 1975 Op. Att’y Gen. No. 75-15.

Forestry investigators not required to take oaths other than loyalty oath. — Forestry investigators provided for by O.C.G.A. § 12-6-20 are not “public officers” of the state, but are “employees” only, and as such are under no requirement to give bond or take an oath, other than the loyalty oath. 1952-53 Op. Att’y Gen. p. 95.

Office of trust under United States Government. — An attorney-hearing examiner for the United States Merit Systems Protection Board may not simultaneously serve as a part-time associate magistrate since the examiner would be exercising discretion vested in the board for the benefit of the public, and thus would be subject to the same disqualification contemplated by O.C.G.A. §§ 45-2-1(4) and 45-3-1(4) as a member of the board, despite technical status as an “employee.” 1985 Op. Att’y Gen. No. U85-12.

45-3-2. Form and subscription of oath.

The form of the oath prescribed in Code Section 45-3-1 and the oath of office to be taken and subscribed shall be forwarded with the dedimus potestatem and shall be taken and subscribed at the time of receiving the commission before the officer to whom the same is directed and in conformity with any directions. (Orig. Code 1863, § 135; Code 1868, § 130; Code 1873, § 140; Code 1882, § 140; Civil Code 1895, § 235; Civil Code 1910, § 270; Code 1933, § 89-303.)

45-3-3. Officer authorized to administer oaths; oaths to be written, subscribed, and dated.

When not otherwise provided by law and when not directed in the dedimus potestatem, the oaths of office may be taken before any officer authorized by law to administer an oath. Such oaths shall be written and subscribed by the persons taking them and accompanied by the certificate of such officer, which shall specify the day and year taken. (Orig. Code 1863, § 136; Code 1868, § 131; Code 1873, § 141; Code 1882, § 141; Civil Code 1895, § 236; Civil Code 1910, § 271; Code 1933, § 89-304.)

JUDICIAL DECISIONS

Cited in McDuffie v. Perkerson, 178 Ga. 230, 173 S.E. 151 (1933).

OPINIONS OF THE ATTORNEY GENERAL

Oath of office of clerk of superior court may be administered by judge of superior court. 1980 Op. Att'y Gen. No. U80-48.

RESEARCH REFERENCES

ALR. — Necessity and sufficiency of officer's jurat or certificate as to oath, 116 ALR 587.

45-3-4. Filing of oaths — Generally.

The oaths prescribed in Code Section 45-3-1, when taken by an officer whose general duties are not confined to any one county unless otherwise specially provided, shall be filed with the certificate required by Code Section 45-3-3 in the office of the Governor and, when taken by an officer whose duties are confined to one county, shall be filed as provided in Code Section 45-3-5. (Orig. Code 1863, § 137; Code 1868, § 132; Code 1873, § 142; Code 1882, § 142; Civil Code 1895, § 237; Civil Code 1910, § 272; Code 1933, § 89-305; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Cited in County Comm'rs v. O'Neal, 38 Ga. App. 158, 142 S.E. 914 (1928); Talmadge v. Cordell, 167 Ga. 594, 146 S.E. 467 (1928); Brewer v. Johnson, 184 Ga. 806, 193 S.E. 778 (1937).

45-3-5. Filing of oaths — County officers.

When taken by the judges of the probate courts and the clerks of the superior courts, official oaths shall be filed in the office of the clerk of the superior court and also entered on the minutes of the court. When taken by sheriffs, the oaths shall be filed in the office of the judge of the probate court and shall be entered on the minutes of the superior courts; and when taken by coroners, tax collectors, tax receivers, county treasurers, magistrates, constables, or any other county officers, they shall be filed in the office of the judge of the probate court, who shall enter them on the minutes of his court. (Orig. Code 1863, § 138; Code 1868, § 133; Code 1873, § 143; Code 1882, § 143; Civil Code 1895, § 238; Civil Code 1910, § 273; Code 1933, § 89-306; Ga. L. 1983, p. 884, § 4-1.)

45-3-6. Filing of oaths — Endorsement of filing time.

The officer in whose office the oaths prescribed in Code Section 45-3-1 are filed must endorse thereon the day and year of filing. (Orig. Code 1863, § 139; Code 1868, § 134; Code 1873, § 144; Code 1882, § 144; Civil Code 1895, § 239; Civil Code 1910, § 274; Code 1933, § 89-307.)

45-3-7. Oaths of deputies.

Before proceeding to act, all deputies shall take the same oaths as their principals take and the oaths shall be filed and entered on the minutes of the same office with the same endorsement thereon; but this Code section shall not apply to any deputy who may be employed in particular cases only. A deputy sheriff may take his oaths before the sheriff and the oaths may be filed in and entered in the records of the sheriff's office. (Orig. Code 1863, § 140; Code 1868, § 135; Code 1873, § 145; Code 1882, § 145; Civil Code 1895, § 240; Civil Code 1910, § 275; Code 1933, § 89-308; Ga. L. 1980, p. 527, § 1.)

JUDICIAL DECISIONS

Cited in Nave v. State, 171 Ga. App. 165, 318 S.E.2d 753 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Emergency squad members to be qualified as deputy sheriffs. — A police intelligence unit should provide that members of emergency squads be qualified as de jure deputy

sheriffs in all counties in which they intend to operate. 1969 Op. Att'y Gen. No. 69-473.

Procedure for qualifying emergency deputies. — Where a number of emergency deputies are to be appointed, they may all be qualified at a joint meeting by a superior

court judge if all counties involved are within that circuit; if, however, other counties are to be served, proper oath must be taken within each such county. 1971 Op. Att'y Gen. No. U71-84.

45-3-8. Effect of failure to take and file oath generally.

No officer or deputy required by law to take and file the oaths prescribed in Code Section 45-3-1 shall enter upon the duties of his office without first taking and filing the same in the proper office. (Orig. Code 1863, § 141; Code 1868, § 136; Code 1873, § 146; Code 1882, § 146; Civil Code 1895, § 241; Civil Code 1910, § 276; Code 1933, § 89-309.)

JUDICIAL DECISIONS

Cited in *Brown v. Blackmon*, 272 Ga. 435, 530 S.E.2d 712 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Local board of education member to take oath prior to assuming duties. — A local board of education member is required to take the oath specified in O.C.G.A. § 45-3-1. Until the member takes the oath, the local board member is not to enter upon the duties of office. 1975 Op. Att'y Gen. No. 75-15.

Reelected or reappointed members may continue to serve. — Members-elect of a local board of education shall not enter upon the duties of office until qualified, commissioned, and administered the appro-

priate oaths. An incumbent board member who has been reelected or reappointed may continue to serve as an official member of the board prior to receiving the commission and being administered the appropriate oaths for the new term. 1975 Op. Att'y Gen. No. 75-15.

Emergency squad members to be qualified as deputy sheriffs. — A police intelligence unit should provide that members of emergency squads be qualified as de jure deputy sheriffs in all counties in which they intend to operate. 1969 Op. Att'y Gen. No. 69-473.

RESEARCH REFERENCES

ALR. — Constitutional, statutory, or charter provision as to time of taking oath of

office and giving official bond as mandatory or directory, 158 ALR 639.

45-3-9. Entry into duties of office without oath.

Any officer or deputy required by law to take and file an official oath who shall enter upon the duties of his office without first taking and filing the same in the proper office shall be guilty of a misdemeanor. (Orig. Code 1863, § 141; Code 1868, § 136; Code 1873, § 146; Code 1882, § 146; Penal Code 1895, § 270; Penal Code 1910, § 273; Code 1933, § 89-9901.)

JUDICIAL DECISIONS

Cited in Century Indem. Co. v. Fidelity & Deposit Co., 175 Ga. 834, 166 S.E. 235 (1932).

OPINIONS OF THE ATTORNEY GENERAL

Effect of deputy's failure to take oath. — Failure of a deputy to take the required oath does not render the deputy's acts taken under color of office to be invalid, inasmuch as notwithstanding the deficiency, the deputy is still a "de facto officer"; the same rule applies where the deficiency is a failure to furnish bond. 1965-66 Op. Att'y Gen. No. 66-211.

Emergency squad members to be qualified as deputy sheriffs. — A police intelligence unit should provide that members of emergency squads be qualified as de jure deputy sheriffs in all counties in which they intend to operate. 1969 Op. Att'y Gen. No. 69-473.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Officer and Public Employees, § 258.

45-3-10. Effect of failure to take and file oath upon validity of official acts.

The official acts of an officer shall be valid regardless of his omission to take and file the oath, except in cases where so specially declared. (Orig. Code 1863, § 142; Code 1868, § 137; Code 1873, § 147; Code 1882, § 147; Civil Code 1895, § 242; Civil Code 1910, § 277; Code 1933, § 89-310.)

JUDICIAL DECISIONS

Official actions not invalidated for failure to take oath. — The validity of an election held at the proper time and place by qualified persons is not affected by their failure to take and subscribe the oath required by law, unless it appears that by reason of such failure the result of the election was different from what it would have been had the managers been duly sworn. *King v. County Bd. of Educ.*, 174 Ga. 685, 164 S.E. 52 (1932).

Liability of surety unaffected by failure to take oath. — The official bond given by a sheriff, conditioned for the faithful performance of the duties of office, obligates the surety thereon for any breach of official duty by the sheriff's deputies, and this includes deputies de facto. *Powell v. Fidelity & Deposit Co.*, 45 Ga. App. 88, 163 S.E. 239 (1932).

De facto officer's acts cannot be collaterally attacked. — Defendant's contention that notaries public lacked authority because they had not taken oath of office and were therefore invalidly appointed is refuted by O.C.G.A. § 45-3-10; and the case law in this state is in accord on a de facto officer theory that by proof of officer's acts the office is proven, and as a de facto officer those acts cannot be collaterally attacked and set aside. *Little v. State*, 157 Ga. App. 462, 278 S.E.2d 17 (1981).

Cited in *King v. County Bd. of Educ.*, 42 Ga. App. 563, 156 S.E. 710 (1931); *Philpot v. Wells*, 69 Ga. App. 489, 26 S.E.2d 155 (1943); *Barrett v. Slagle*, 214 Ga. 650, 106 S.E.2d 908 (1959); *Mach v. State*, 109 Ga. App. 154, 135 S.E.2d 467 (1964); *Westley v. State*, 143 Ga. App. 344, 238 S.E.2d 701 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Official actions not invalidated for failure to take oath. — Failure of a deputy to take the required oath does not render the deputy's acts taken under color of office to be invalid, inasmuch as notwithstanding the

deficiency, the deputy is still a "de facto officer"; the same rule applies where the deficiency is a failure to furnish bond. 1965-66 Op. Att'y Gen. No. 66-211.

RESEARCH REFERENCES

ALR. — Right of de facto officer to salary or other compensation annexed to office, 151 ALR 952.

Presumption and burden of proof as to

one's status as a de facto officer upon which validity or effect of his act depends, 161 ALR 967.

45-3-10.1. Applicability of Code Sections 45-3-1 through 45-3-10.

(a) Code Sections 45-3-1 through 45-3-10 shall apply to all municipal corporations and to all peace officers of this state or any political subdivision or authority thereof.

(b) When taken by municipal officers, official oaths shall be filed in the office of the judge of the probate court. When taken by peace officers, official oaths shall be filed in the records of such department or agency. (Code 1981, § 45-3-10.1, enacted by Ga. L. 1998, p. 510, § 2.)

45-3-11. Loyalty oath — Persons required to take oath generally.

All persons who are employed by and are on the payroll of the state and are the recipients of wages, per diem, or salary of the state or its departments and agencies, with the exception of pages employed by the General Assembly, and all counties and cities, school districts, and local educational systems throughout the entire state, are required to take an oath that they will support the Constitution of the United States and the Constitution of Georgia, and that they are not members of the Communist Party. (Ga. L. 1949, p. 960, § 1; Ga. L. 1961, p. 552, § 1; Ga. L. 1982, p. 3, § 45; Ga. L. 1984, p. 22, § 45; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

Cross references. — Investigation of person prior to public employment to ascertain whether such person is a subversive person,

§ 16-11-13. Eligibility of subversive persons to be nominated or elected to public office, § 21-2-7.

Law reviews. — For comment on *Baggett v. Bullitt*, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), see 2 Ga. St. B.J. 123 (1965).

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of oath. — The portion of the Georgia loyalty oath which requires

one to swear to support the constitutions of Georgia and the United States is constitu-

tional and valid. The portion of the Georgia loyalty oath which requires one to disavow membership in the Communist Party is violative of the first and fourteenth amendments of the United States Constitution and should not be administered. 1985 Op. Att'y Gen. No. 85-19.

Oath required of members of county board of health. — Members of the county board of health are public officers within the meaning of O.C.G.A. §§ 45-3-1 and 45-3-16 and are required to take the oath as prescribed by O.C.G.A. § 45-3-11. 1963-65 Op. Att'y Gen. p. 432.

Since the language of O.C.G.A. § 45-3-11 broadly includes all persons employed by

and on the payroll, and recipients of wages per diem and/or salary of the State of Georgia and counties or cities, O.C.G.A. § 45-3-11 includes members of county boards of health and requires such members to take the approved oath of loyalty. 1963-65 Op. Att'y Gen. p. 432.

Oath not required of employees of city housing authority. — Although a city housing authority is an instrumentality of the state, it is not an agency, board, or department of the state, and, therefore, employees of the housing authority of a city are not required to sign the loyalty oath. 1950-51 Op. Att'y Gen. p. 98.

RESEARCH REFERENCES

ALR. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 268.

45-3-12. Loyalty oath — Elected officers.

The loyalty oath required by Code Section 45-3-11, this Code section, and Code Sections 45-3-13 through 45-3-15 shall apply to all elected officers of this state, including the Governor, constitutional officers, elected officials of any political subdivision of the government of Georgia, and local school board officials. (Ga. L. 1949, p. 960, § 5; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

ALR. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 268.

45-3-13. Loyalty oath — Form.

The oath prescribed in Code Section 45-3-11 shall be in the following form:

“I, _____ (Name) a citizen of _____ and being an employee of _____ and the recipient of public funds for services rendered as such employee, do hereby solemnly swear and affirm that I will support the Constitution of the United States and the Constitution of Georgia, and that I am not a member of the Communist Party.”

(Ga. L. 1949, p. 960, § 3; Ga. L. 1950, p. 282, § 1.)

Law reviews. — For comment on Baggett v. Bullitt, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), see 2 Ga. St. B.J. 123 (1965).

JUDICIAL DECISIONS

For constitutionality of O.C.G.A. § 45-3-13 prior to the 1981 recodification. — Univ. Professors v. Board of Regents, 246 F. Supp. 553 (N.D. Ga. 1965).
See Georgia Conference of Am. Ass'n of

RESEARCH REFERENCES

ALR. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 268.

45-3-14. Loyalty oath — Person to be taken from payroll for failure to sign oath.

If any person required by Code Sections 45-3-11 through 45-3-13, this Code section, and Code Section 45-3-15 to execute a loyalty oath fails to sign said oath, then the governing authority under whom such person is employed shall cause such person's name to be taken from the payroll and such person shall not be permitted to receive any payment from the state. (Ga. L. 1949, p. 960, § 4; Ga. L. 1990, p. 8, § 45; Ga. L. 1991, p. 94, § 45.)

Law reviews. — For comment on Baggett v. Bullitt, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), see 2 Ga. St. B.J. 123 (1965).

JUDICIAL DECISIONS

Cited in Brown v. Blackmon, 272 Ga. 435, 530 S.E.2d 712 (2000).

RESEARCH REFERENCES

ALR. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 268.

45-3-15. Loyalty oath — Proceeding for false swearing when oath violated.

If any person required to do so by Code Sections 45-3-11 through 45-3-14 and this Code section executes a loyalty oath and subsequently it is proved that said individual has violated the oath, then the governing authority shall institute proceedings in the proper court against such person for false swearing. (Ga. L. 1949, p. 960, § 6; Ga. L. 1990, p. 8, § 45.)

Law reviews. — For comment on Baggett v. Bullitt, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), see 2 Ga. St. B.J. 123 (1965).

RESEARCH REFERENCES

ALR. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 268.

45-3-16. Applicability of article.

This article shall apply to the oaths of office of all public officers of this state unless the contrary is expressly provided. (Orig. Code 1863, § 163; Code 1868, § 158; Code 1873, § 169; Code 1882, § 169; Civil Code 1895, § 265; Civil Code 1910, § 300; Code 1933, § 89-301.)

JUDICIAL DECISIONS

Oath not required of municipal officers. — O.C.G.A. § 45-3-16 applies to officers commissioned by the Governor, and not to municipal officers not commissioned by the Governor. *Brewer v. Johnson*, 184 Ga. 806, 193 S.E. 778 (1937).

Unless required in city charter or other statute. — An oath by a municipal officer is not necessary in the absence of any require-

ment thereof by the city charter or some other statute. *Brewer v. Johnson*, 184 Ga. 806, 193 S.E. 778 (1937).

Cited in *Maddox v. City of Atlanta*, 49 Ga. App. 791, 171 S.E. 573 (1933); *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934); *Morgan v. Crow*, 183 Ga. 147, 187 S.E. 840 (1936).

OPINIONS OF THE ATTORNEY GENERAL

Oath required of members of county board of health. — Members of the county board of health are public officers within the meaning of O.C.G.A. § 45-3-1 and O.C.G.A.

§ 45-3-16 and are required to take the oath as prescribed by § 45-3-11. 1963-65 Op. Att'y Gen. p. 432.

ARTICLE 2

COMMISSIONS

45-3-30. Officers commissioned under great seal of state.

The commissions of the following officers shall have annexed thereto the great seal of the state, and shall be signed by the Governor and countersigned by the Secretary of State, namely: senators and representatives in Congress; Justices of the Supreme Court; Judges of the Court of Appeals, superior courts, and juvenile courts; the Attorney General; district attorneys; reporters of the Supreme Court and Court of Appeals; the Secretary of State; the Commissioner of Insurance; and all military officers of the grade of general. The commissions of all federal and judicial officers enumerated above shall be on parchment. (Orig. Code 1863, § 129; Code 1868, § 124; Code 1873, § 133; Code 1882, § 133; Civil Code 1895, § 227; Civil Code 1910, § 262; Code 1933, § 89-201; Ga. L. 1984, p. 565, § 3; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Cited in *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961); *Duncan v. Poythress*, 657 F.2d 691 (5th Cir. 1981).

45-3-31. Officers commissioned under executive seal.

The commissions of all other civil officers, except constables and clerks of magistrate courts, of the state or county shall be under the seal of the office of the Governor, signed by the Governor, and countersigned by one of his secretaries. All officers of the militia of the grade of lieutenant or higher shall have commissions under the seal of the office of the Governor. (Orig. Code 1863, § 130; Code 1868, § 125; Code 1873, § 134; Code 1882, § 134; Civil Code 1895, § 228; Civil Code 1910, § 263; Code 1933, § 89-202; Ga. L. 1983, p. 884, § 3-32; Ga. L. 1984, p. 22, § 45; Ga. L. 1987, p. 398, § 2.)

JUDICIAL DECISIONS

Judicial notice of officers holding commissions. — The courts of Georgia are bound to take judicial notice of who are the public officers of the state holding under commissions issued by the Governor. *Henson v. Airways Serv., Inc.*, 220 Ga. 44, 136 S.E.2d 747 (1964).

An inspector of fertilizer is not such a civil

officer as must be commissioned by the Governor under O.C.G.A. § 45-3-31. *Talmadge v. Cordell*, 167 Ga. 594, 146 S.E. 467 (1928).

Cited in *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961); *Foster v. Kelly*, 107 Ga. App. 801, 131 S.E.2d 587 (1963).

OPINIONS OF THE ATTORNEY GENERAL

County school superintendents entitled to commission. — All county school superintendents, whether elected by the people under the Constitution or elected by the local board of education under a local constitutional amendment, are entitled to a

commission under O.C.G.A. § 45-3-31. 1954-56 Op. Att'y Gen. p. 193.

The sheriff is an officer commissioned by the executive department. 1974 Op. Att'y Gen. No. U74-29.

CHAPTER 4

OFFICIAL BONDS

Sec.		Sec.	
45-4-1.	Bonds to be payable to Governor and conditioned upon faithful discharge of duties.	45-4-16.	Manner in which power of attorney to be attested and filed where bond signed by attorney in fact.
45-4-2.	Deputies to give bond to principals; conditions, amount, and recording same as bonds of principals.	45-4-17.	Probate court judge to certify to Governor taking of oaths and giving of bonds.
45-4-3.	Return of bonds to specified officers; actions on bonds.	45-4-18.	Certification of failure of officer to make and file bond.
45-4-4.	Bonds of officers commissioned by Governor to be prepared by office of Governor.	45-4-19.	Notice to Attorney General of failure of officer to file bond.
45-4-5.	Bonds to have sureties; number and qualifications of sureties generally.	45-4-20.	Nonconforming bond to stand in place of official bond though not approved and filed.
45-4-6.	Corporate sureties authorized.	45-4-21.	Effect of failure of officer to mark bond or give required notice.
45-4-7.	County officials required to have corporate surety on bond; county to pay premiums.	45-4-22.	Performance by public officer of official act before bond approved and filed.
45-4-8.	Attorney at law or county officer not to be surety.	45-4-23.	Places for keeping bonds and copies of bonds.
45-4-9.	Governor to require new bond and surety when surety relieved or insufficient.	45-4-24.	Bond obligations of principal and surety; conditions required for existence of cause of action on bond.
45-4-10.	Officer failing to comply with requisition of Governor to be removed from office.	45-4-25.	Actions on bonds of public officers authorized; name in which action to be brought; jurisdiction.
45-4-11.	Blanket bonds covering two or more political subdivisions, officers authorized; amount and coverage period; recording; entities.	45-4-26.	Institution of action on deputy's bond.
45-4-12.	Approval to be endorsed on bonds; bonds not to be filed until approved.	45-4-27.	Effect of recovery on bond upon subsequent proceedings thereupon.
45-4-13.	Approval, filing, and recording of bonds of court clerks, magistrates, sheriffs, coroners, surveyors, treasurers, and tax collectors.	45-4-28.	Officer liable when bond penalty exhausted or invalid and when acting without bond.
45-4-14.	Time for filing bonds.	45-4-29.	Measure of damages in actions on official bonds.
45-4-15.	Filing time to be endorsed on bonds.	45-4-30.	Applicability of chapter.

Cross references. — Giving of bonds by persons collecting tax, revenue, or other moneys on behalf of state, political subdivision, etc., § 45-8-2 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Bond not required from forestry investigators. — Forestry investigators provided for by O.C.G.A. § 12-6-20 are not “public officers” of the state, but are “employees” only, and as such are under no requirement to give bond or take an oath, other than the loyalty oath. 1952-53 Op. Att’y Gen. p. 95.

O.C.G.A. 15-16-5 must be construed in conjunction with O.C.G.A. § 45-4-1 et seq., relating to official bonds in general. 1976 Op. Att’y Gen. No. 76-31.

RESEARCH REFERENCES

ALR. — Liability on general bond of public officer for acts covered by a special bond, 4 ALR 1431; 140 ALR 1459.

Liability of officer or his sureties in respect of public funds as affected by settlement or compromise agreement with other officials or board or committee, 103 ALR 1048.

Statutory conditions prescribed for public officer’s bond as part of bond which does not in terms include them, or which expressly excludes them, 109 ALR 501.

Personal liability of public officer or sure-

ties on his bond for nonperformance or improper performance of a duty imposed upon a board of corporate body of which he is a member, 123 ALR 756.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Time from which interest begins to run on fidelity or public officer’s bond, 57 ALR2d 1317.

45-4-1. Bonds to be payable to Governor and conditioned upon faithful discharge of duties.

The bonds of all public officers required by law to give bond, unless otherwise provided, shall be made payable to the Governor and his successor in office. In all cases in which a different condition is not prescribed, such bonds shall be conditioned upon the faithful discharge of the duties of the office by the officer during the time he continues in the office or discharges any of its duties. (Orig. Code 1863, § 143; Code 1868, § 138; Code 1873, § 148; Code 1882, § 148; Civil Code 1895, § 243; Civil Code 1910, § 278; Code 1933, § 89-402.)

JUDICIAL DECISIONS

Conditions read in conjunction with official bonds. — O.C.G.A. § 45-4-24 providing that official bonds shall be for the benefit of persons injured by the principals must be read with the conditions of such bonds obligating the officials to well and truly perform the duties of their office, and refers to such liabilities as arise within the proper intendment of the obligation. *Citizens’ Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Culpepper v. United States Fid. & Guar. Co.*, 199 Ga. 56, 33 S.E.2d 168 (1945).

Conditions on bond of county school superintendent. — The bond of the county school superintendent is an official bond; and there being nothing in the law requiring it which prescribes a different condition, under O.C.G.A. § 45-4-1 it is properly conditioned upon the faithful discharge of the duties of this office. *Citizens’ Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932).

Sureties are chargeable with knowledge of the law, and of having executed official bonds with reference to the law. *Citizens’*

Bank v. American Sur. Co., 174 Ga. 852, 164 S.E. 817 (1932).

Cited in Talmadge v. McDonald, 44 Ga. App. 728, 162 S.E. 856 (1932); Green v.

Perryman, 186 Ga. 239, 197 S.E. 880 (1938); Drost v. Robinson, 194 Ga. 703, 22 S.E.2d 475 (1942); Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 (1973).

45-4-2. Deputies to give bond to principals; conditions, amount, and recording same as bonds of principals.

Deputies shall give bonds with surety, payable to their principals, for their conduct as deputies, conditioned as and for the same amounts, unless otherwise provided by law, as their principals' bonds. Such bonds shall be recorded in the same office and in the same manner as the bonds of the principals. (Orig. Code 1863, § 157; Code 1868, § 152; Code 1873, § 163; Code 1882, § 163; Civil Code 1895, § 259; Civil Code 1910, § 294; Code 1933, § 89-426; Ga. L. 1982, p. 1779, §§ 2, 4.)

JUDICIAL DECISIONS

Option of which bond to sue on. — One who is aggrieved by the official misconduct of a deputy sheriff may at that person's option sue either on the sheriff's bond or on the deputy's bond. Aldridge v. Wooten, 68 Ga. App. 887, 24 S.E.2d 700 (1943).

Cited in Drost v. Robinson, 194 Ga. 703, 22 S.E.2d 475 (1942); Warren v. Walton, 231 Ga. 495, 202 S.E.2d 405 (1973).

OPINIONS OF THE ATTORNEY GENERAL

A deputy sheriff should give bond in the same amount as principal. 1969 Op. Att'y Gen. No. 69-100.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 287.

ALR. — Liability of clerk of court, county clerk or prothonotary, or surety on bond, for

negligent or wrongful acts of deputies or assistants, 71 ALR2d 1140.

45-4-3. Return of bonds to specified officers; actions on bonds.

All bonds taken by public officers under the laws of this state shall be returned to the offices specified by law; and any person interested therein may bring an action thereon, in his own name, in any court having jurisdiction thereof. (Orig. Code 1863, § 15; Code 1868, § 13; Code 1873, § 13; Code 1882, § 13; Civil Code 1895, § 13; Civil Code 1910, § 13; Code 1933, § 89-905; Ga. L. 1983, p. 3, § 34.)

JUDICIAL DECISIONS

No preliminary judgment against the principal, the officer, is necessary to a suit against the surety on bond. Maryland Cas. Co. v. Smith, 56 Ga. App. 154, 192 S.E. 449 (1937).

Cited in Fidelity & Deposit Co. v. Norwood, 38 Ga. App. 534, 144 S.E. 387

(1928); United States Fid. & Guar. Co. v. Stephens, 45 Ga. App. 300, 164 S.E. 461 (1932); Matthews v. Rowell, 49 Ga. App. 673, 176 S.E. 802 (1934); Manufacturers' Fin. Acceptance Corp. v. Bradley, 50 Ga. App. 138, 177 S.E. 272 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 539-544.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 257, 297, 298.

ALR. — Personal liability of officers of drainage or highway districts for negligence of subordinates or employees causing damage to person or property, 61 ALR 300.

Liability of sureties on bond of public officer as affected by fact that it was not signed by him, 110 ALR 959.

Suit against public officer to recover possession of property as suit against state or federal government, 160 ALR 332.

45-4-4. Bonds of officers commissioned by Governor to be prepared by office of Governor.

Official bonds of all officers who are entitled to commissions from the Governor and who are required to give bonds shall be prepared and furnished by the office of the Governor at the time of forwarding the dedimus potestatem. (Orig. Code 1863, § 144; Code 1868, § 139; Code 1873, § 149; Code 1882, § 149; Civil Code 1895, § 244; Civil Code 1910, § 279; Code 1933, § 89-403; Ga. L. 1990, p. 8, § 45.)

Cross references. — Governor issuing a dedimus potestatem, § 45-12-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 134 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

45-4-5. Bonds to have sureties; number and qualifications of sureties generally.

All bonds that this chapter applies to shall have at least two and not more than 20 good and solvent sureties who shall be worth the amount of said bond, over and above their homestead, in case of county officers, all of whom must be permanent residents of the state and two of whom must also be residents of the county; provided, however, that a surety insurance company which has complied with all requirements to transact business in this state may be accepted as surety upon the bond of any person required by law to execute bonds, in lieu of any other surety or sureties, as provided

in Code Section 45-4-6. When the approving court or officers do not know that a surety is worth the required amount, they shall not accept him unless he swears that his means are sufficient in amount, which swearing they shall record on the bond. (Orig. Code 1863, § 146; Ga. L. 1863-64, p. 124, § 3; Code 1868, § 141; Code 1873, § 151; Code 1882, § 151; Ga. L. 1889, p. 45, § 1; Civil Code 1895, § 246; Civil Code 1910, § 281; Code 1933, § 89-414.)

Cross references. — Authorizing corporate surety in lieu of personal surety, § 33-24-48.

JUDICIAL DECISIONS

Cited in Talmadge v. McDonald, 44 Ga. App. 728, 162 S.E. 856 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 352. sureties from liability for loss due to failure of bank or other depository, 98 ALR 719.

ALR. — Construction and applicability of provision of public officer's bond exempting

45-4-6. Corporate sureties authorized.

Guaranty or surety companies incorporated under the laws of this state or which have complied with all requirements to transact business in this state may become sureties upon the bonds of all state or county officers; and the various officers of this state whose duty it is to approve the sureties upon such bonds are authorized to accept such company or companies as one of the sureties or the only surety upon such bond, as the solvency of such company may warrant. (Ga. L. 1889, p. 178, § 1; Civil Code 1895, § 247; Civil Code 1910, § 282; Code 1933, § 89-415.)

Cross references. — Authorizing corporate surety in lieu of personal surety, § 33-24-48.

OPINIONS OF THE ATTORNEY GENERAL

Corporate surety liable for full amount of sheriff's bond. — Sheriffs must be bonded by at least one corporate surety liable for full amount of the statutory bond penalty; it is not permissible for sheriffs to file separate corporate surety bonds, each for less than the surety penalty even where the assumed but fictitious total of the penalties under each bond equals the statutory penalty. 1976 Op. Att'y Gen. No. 76-31.

RESEARCH REFERENCES

ALR. — Construction and applicability of provision of public officer's bond exempting sureties from liability for loss due to failure of bank or other depository, 98 ALR 719.

45-4-7. County officials required to have corporate surety on bond; county to pay premiums.

All county officials who are required to give an official bond shall make bond signed by some surety or guaranty company authorized to do business in this state. The premiums due on all such bonds must be paid by the county fiscal authorities out of county funds, and it shall be mandatory upon the county fiscal authorities in every county in the state to pay the premiums due on all such bonds out of county funds. This Code section shall not apply to county school superintendents' bonds. (Ga. L. 1947, p. 1543, § 1; Ga. L. 1949, p. 1190, § 1; Ga. L. 1951, p. 741, § 1.)

Law reviews. — For article on bond liability and righting the wrongs of Georgia local

government officers, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

County not liable beyond payment of premiums. — Except for the payment of the premiums herein mentioned, a county has no liability in connection with the violations of the civil rights of any person by a county officer. *Wayne County Bd. of Comm'rs v. Warren*, 236 Ga. 150, 223 S.E.2d 133 (1976).

Availability to surety company of information concerning extent of liability. — When a

surety company agrees to execute a surety bond of a public officer, it has the opportunity and should avail itself of every means of ascertaining exactly what position that officer occupies with respect to public funds for which the company assumes liability. *Century Indem. Co. v. Fidelity & Deposit Co.*, 175 Ga. 834, 166 S.E. 235 (1932).

OPINIONS OF THE ATTORNEY GENERAL

No state funds used to pay premiums. — The intent of O.C.G.A. § 45-4-7 is to require these premiums to be paid out of county funds without any pro rata share being paid by the state. 1948-49 Op. Att'y Gen. p. 456.

O.C.G.A. § 45-4-7 applies only to certain county officials. — The General Assembly intended O.C.G.A. § 45-4-7 to apply only to county officials who are required by law to give an official bond. 1948-49 Op. Att'y Gen. p. 462.

O.C.G.A. § 45-4-7 applies to a deputy sheriff. — Deputy sheriff is "county official" within meaning of law and premiums on deputy's bond should be paid by county. 1957 Op. Att'y Gen. p. 37.

O.C.G.A. § 45-4-7 applies to a sheriff. — A judgment against a sheriff elect for failure to account for and pay over county moneys must be paid before such individual is eligi-

ble to hold office, and a county must pay the bond premium on a sheriff regardless of the premium charged. 1976 Op. Att'y Gen. No. U76-58.

O.C.G.A. § 45-4-7 does not apply to a constable. — A constable does not come under the provisions of O.C.G.A. § 45-4-7 relating to county officers posting surety bonds. 1952-53 Op. Att'y Gen. p. 24.

One corporate surety liable for full amount of sheriff's bond. — Sheriffs must be bonded by at least one corporate surety liable for full amount of the statutory bond penalty; it is not permissible for sheriffs to file separate corporate surety bonds, each for less than the surety penalty even where the assumed but fictitious total of the penalties under each bond equals the statutory penalty. 1976 Op. Att'y Gen. No. 76-31.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 352.

ALR. — Right or duty of municipality,

county, or other public body to pay premium on bond given by officer, 66 ALR 795.

45-4-8. Attorney at law or county officer not to be surety.

No attorney at law or county officer shall be accepted as surety on the bond of any county officer. (Ga. L. 1876, p. 13, § 1; Code 1882, § 152; Civil Code 1895, § 248; Civil Code 1910, § 283; Code 1933, § 89-416.)

45-4-9. Governor to require new bond and surety when surety relieved or insufficient.

The Governor shall require a new surety and bond for the performance of any public duty by any officer under this chapter when, in the Governor's discretion:

(1) The surety gives written notice to the Governor of his desire to be relieved from future liability for good cause stated and sworn to; or

(2) The surety becomes insufficient, based upon satisfactory evidence. (Laws 1845, Cobb's 1851 Digest, p. 1036; Code 1863, § 164; Code 1868, § 159; Code 1873, § 170; Code 1882, § 170; Civil Code 1895, § 266; Civil Code 1910, § 301; Code 1933, § 89-424.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 368.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 294.

45-4-10. Officer failing to comply with requisition of Governor to be removed from office.

If any officer shall fail to comply with the requisition of the Governor to furnish a new bond and surety within ten days from the date such officer is served personally with a copy of the executive order containing such requisition, he shall on account of such failure be removed from office and a vacancy declared. (Orig. Code 1863, § 165; Code 1868, § 160; Code 1873, § 171; Code 1882, § 171; Civil Code 1895, § 267; Civil Code 1910, § 302; Code 1933, § 89-425.)

RESEARCH REFERENCES

ALR. — Nature of proceedings under statute providing for removal of officer on accusation by grand jury, etc., 81 ALR 1089.

Power to remove public officer without

notice and hearing, 99 ALR 336.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-4-11. Blanket bonds covering two or more political subdivisions, officers authorized; amount and coverage period; recording; entities.

(a) Notwithstanding any other provision of law to the contrary, the several counties, municipalities, and other political subdivisions of this state, including independent school districts, are authorized to purchase blanket bonds in lieu of individual bonds. Blanket bonds may cover any two or more officers, officials, agents, and any other employees of such political subdivisions where they are required by law to be bonded.

(b) A blanket bond shall be in an amount sufficient to cover all or certain specified individual bonds otherwise required by law to be purchased by a county, municipality, or other political subdivision. The blanket bond shall specify the dates of coverage, the positions or persons covered by the bond, and the persons or entities to whom or to which the bond is payable.

(c) A blanket bond shall be signed by the judge of the probate court of the county wherein the county, municipality, or school district purchasing the blanket bond is located. The bond shall be filed and recorded in the office of the probate court. Such signing, filing, and recording shall be in lieu of any other endorsement, signing, filing, approval, or recording otherwise required by law for individual bonds. Where a municipality or school district is located in more than one county, the bond shall be signed, filed, and recorded by the probate judge of the county within which the municipality or school district is predominately located based upon population.

(d) In addition to any other guaranty or surety companies authorized by this chapter, a blanket bond may be offered by an interlocal risk management agency created pursuant to Chapter 85 of Title 36 or Article 29 of Chapter 2 of Title 20 and may be in the form of a copy of an original annual coverage agreement providing the blanket bond. (Ga. L. 1963, p. 480, § 1; Ga. L. 2002, p. 978, § 1.)

The 2002 amendment, effective May 14, 2002, designated the existing provisions as subsection (a); in subsection (a), substituted "Notwithstanding any other provision of law to the contrary, the" for "The" at the beginning, substituted "districts" for "boards" near the middle, and substituted "in lieu of

individual bonds. Blanket bonds may" for "which"; and added subsections (b) through (d).

Law reviews. — For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

45-4-12. Approval to be endorsed on bonds; bonds not to be filed until approved.

The approval of all official bonds shall be in writing, endorsed on the bonds, and shall show the day and year on which they were approved; and such bonds shall not be filed until thus approved. (Orig. Code 1863, § 145;

Code 1868, § 140; Code 1873, § 150; Code 1882, § 150; Civil Code 1895, § 245; Civil Code 1910, § 280; Code 1933, § 89-404.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 136.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 283.

45-4-13. Approval, filing, and recording of bonds of court clerks, magistrates, sheriffs, coroners, surveyors, treasurers, and tax collectors.

The official bonds given for county taxes by the clerks of the superior courts, chief magistrates, magistrates, sheriffs, coroners, county surveyors, county treasurers, county tax collectors, and county tax receivers shall be approved by the judge of the probate court, filed in his office, and recorded by him. The bonds of tax collectors and tax receivers for state taxes, after being likewise approved, shall be recorded by the judge of the probate court; and the original bond shall be transmitted by him to the Governor for deposit in the Comptroller General's office. (Orig. Code 1863, § 155; Code 1868, § 150; Code 1873, § 161; Code 1882, § 161; Civil Code 1895, § 257; Civil Code 1910, § 292; Code 1933, § 89-405; Ga. L. 1989, p. 247, § 1.)

45-4-14. Time for filing bonds.

The official bonds of public officers, required by law to be filed in the office of the Comptroller General, Secretary of State or with the office of the Governor, shall be filed within 40 days after the election or appointment of such officers. All county officers shall have until the first day of January following the election to file their bonds as required by law. (Orig. Code 1863, § 148; Ga. L. 1863-64, p. 124, § 1; Code 1868, § 143; Code 1873, § 154; Ga. L. 1875, p. 16, § 1; Code 1882, § 154; Civil Code 1895, § 250; Ga. L. 1898, p. 105, § 1; Civil Code 1910, § 285; Code 1933, § 89-408; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Duty of reelected legislative official to file bond. — Where an election for Commissioner of Madison County, a legislative office, was held in November, at which an incumbent was reelected to such office, it was the incumbent's duty to file an official bond with the ordinary (now probate judge) on or before January 1; and, upon the incumbent's own personal failure to do so, a vacancy in the office resulted. *Compton v. Hix*, 184 Ga. 749, 193 S.E. 252 (1937).

Failure by reelected official to file bond

results in vacancy of the office. — Where, after November election, ordinary (now probate judge) received from Governor a commission and oath, and on December 18 notified the officer so reelected that the ordinary had them ready for the officer elect to qualify by filing an official bond and taking the oath, and the officer, having already on December 6 applied to a surety company to become a surety, but not having heard from the company, failed to do anything more until after the first day of January

toward procurement of a bond than to inquire of the local agent, thus allowing the prescribed time to expire without filing the bond, the failure to file bond was necessarily the fault of the officer elect, and resulted in a vacancy of the office. *Compton v. Hix*, 184 Ga. 749, 193 S.E. 252 (1937).

Disregard for the requirements of O.C.G.A. § 45-4-14 amounts to a forfeiture by the respondent of any claim to the office.

Especially would this be true when it appears that, due to the respondent's neglect and delay in filing any bond, another person has been named to the office, and has qualified by taking the oath and making the bond required by law. *Robert v. Steed*, 207 Ga. 41, 60 S.E.2d 134 (1950).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

ALR. — Constitutional, statutory, or charter provision as to time of taking oath of office and giving official bond as mandatory or directory, 158 ALR 639.

45-4-15. Filing time to be endorsed on bonds.

Every officer in whose office the official bond of any public officer is filed shall endorse on such bond the day and year when the same was filed and shall sign his name to such endorsement. (Orig. Code 1863, § 151; Code 1868, § 146; Code 1873, § 157; Code 1882, § 157; Civil Code 1895, § 253; Civil Code 1910, § 288; Code 1933, § 89-411.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 135.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

45-4-16. Manner in which power of attorney to be attested and filed where bond signed by attorney in fact.

When an official bond is signed by an attorney in fact, the power of attorney shall be attested by the judge of the probate court and filed and recorded in the same manner as the bond. (Orig. Code 1863, § 147; Code 1868, § 142; Code 1873, § 153; Code 1882, § 153; Civil Code 1895, § 249; Civil Code 1910, § 284; Code 1933, § 89-417.)

45-4-17. Probate court judge to certify to Governor taking of oaths and giving of bonds.

The judge of the probate court must sign a certificate to the Governor stating that the clerks of the superior courts, chief magistrates, magistrates, sheriffs, coroners, county surveyors, county treasurers, county tax collectors, and county tax receivers have taken the oaths and given the bonds sent from the office of the Governor, together with a statement of the dates, amounts, and names of the sureties of each and that the judges of the probate court have delivered to such officers their commissions. The certificate and

statement shall be attested by the clerk of said court, if any, and immediately transmitted to the Governor. (Orig. Code 1863, § 156; Code 1868, § 151; Code 1873, § 162; Code 1882, § 162; Civil Code 1895, § 258; Civil Code 1910, § 293; Code 1933, § 89-406; Ga. L. 1989, p. 247, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

45-4-18. Certification of failure of officer to make and file bond.

When any officer of whom bond is required shall fail to make and file the same, as prescribed in Code Section 45-4-14, the court or officer in whose office the bond is required to be filed shall at once certify such failure to the appointing power and to the power whose duty it may be to order an election. (Orig. Code 1863, § 149; Code 1868, § 144; Code 1873, § 155; Code 1882, § 155; Civil Code 1895, § 251; Civil Code 1910, § 286; Code 1933, § 89-409.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 47, 48.

45-4-19. Notice to Attorney General of failure of officer to file bond.

If any public officer required by law to give bond shall fail to file the same in the proper office within the time prescribed, notice of such failure shall be given to the Attorney General or to the appropriate prosecuting attorney by the officer in whose office such bond is required to be filed, by or during the first two days of the session of the superior court held in the county in which the officer so failing resides, next after such failure. (Orig. Code 1863, § 152; Code 1868, § 147; Code 1873, § 158; Code 1882, § 158; Civil Code 1895, § 254; Civil Code 1910, § 289; Code 1933, § 89-412.)

45-4-20. Nonconforming bond to stand in place of official bond though not approved and filed.

Whenever any officer required by law to give an official bond shall act under a bond which is not payable and conditioned or not approved and filed as prescribed by law, such bond shall not be void but shall stand in the place of the official bond, subject, on its condition being broken, to all the remedies, including actions, which the persons aggrieved might have maintained on the official bond. (Orig. Code 1863, § 161; Code 1868, § 156; Code 1873, § 167; Code 1882, § 167; Civil Code 1895, § 263; Civil Code 1910, § 298; Code 1933, § 89-419.)

JUDICIAL DECISIONS

Purpose of O.C.G.A. § 45-4-20. — O.C.G.A. § 45-4-20, speaking in a general sense, was enacted to prevent miscarriages of justice that might occur whenever such a bond is not approved as prescribed by law. *Century Indem. Co. v. Fidelity & Deposit Co.*, 175 Ga. 834, 166 S.E. 235 (1932).

Bond with nonconforming contents taking the place of official bond. — The law requiring a bond for the Commissioner of Agriculture, and the bond alleged to have been breached being the only bond given by the defendant as Commissioner of Agriculture, and being the bond under which the person served as Commissioner of Agriculture during the time alleged, the said bond, even assuming if it was irregular in some respects, "stands in the place of the official bond." *Talmadge v. McDonald*, 44 Ga. App. 728, 162 S.E. 856 (1932).

Although the bond executed by a public official who was required by statute to execute a bond for the faithful performance of the duties of the office contained limitations upon the liability of the principal and the surety which were not permissible in the statutory bond, it was payable to the obligee required by the statute, and it was the intention of the parties to execute the statutory bond required of a public officer for the faithful performance of the duties of the office, therefore the limitations were void, and the bond was to be considered as the statutory bond required. *American Sur. Co. v. Googe*, 45 Ga. App. 108, 163 S.E. 293 (1932).

Bond not properly executed and approved taking the place of official bond. — Where a bond was executed by a bank, which had been legally designated as a depository to receive money for a county in which the office of treasurer had been abolished, and the bond was conditioned upon the faithful discharge by the bank of its duties as county depository but was made payable to a desig-

nated person described therein as the ordinary "in and for said county, for the time being, and his successors in office," and, where the county was one which had a commissioner to whom the bond should have been made payable as required by O.C.G.A. § 36-6-4, and the bond was approved by the ordinary (now probate judge), the tax collector, and the commissioner, as the "county depository commission," instead of by the commissioner, as required by O.C.G.A. § 36-6-4, the bond was one indemnifying the county against loss of county funds while in the possession of the bank as the county depository; and while the bond was not executed and approved as required by law, it stood, by virtue of O.C.G.A. § 45-4-20, in the place of the official bond required by law of a depository of county funds. *Carter v. Veal*, 42 Ga. App. 88, 155 S.E. 64 (1930).

Bond not properly executed creating common law liability. — A bond of a public officer of this state, not made payable to the obligee designated by the statute requiring such bond, and not conditioned as prescribed by law, is not vitiated, but is a common-law undertaking rather than a statutory bond, and the surety on such a bond is only liable under the provisions contained in such bond. *U.S. Fid. & Guar. Co. v. McCurdy*, 51 Ga. App. 507, 180 S.E. 902 (1935).

Bond is binding even though not signed by the principal. — Where an official bond is made, delivered, accepted, and acted upon as an official bond, the same being a joint and several obligation under its terms and provisions, it is binding on both principal and surety, though not signed by the principal. *U.S. Fid. & Guar. Co. v. McCurdy*, 51 Ga. App. 507, 180 S.E. 902 (1935).

Officer and director of bank was not a public official within the meaning of O.C.G.A. § 45-4-20. *Green v. Perryman*, 186 Ga. 239, 197 S.E. 880 (1938).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 133, 134.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 283.

ALR. — Liability of sureties on bond of public officer as affected by fact that it was not signed by him, 110 ALR 959.

45-4-21. Effect of failure of officer to mark bond or give required notice.

If any officer whose duty it is to mark a bond filed and to give the several notices required in this chapter shall fail to do so without good and sufficient excuse, he shall be fined as for a contempt of court, in the discretion of the court, upon information being filed and a citation being served to appear before the superior court of the county of his residence. (Orig. Code 1863, § 153; Code 1868, § 148; Code 1873, § 159; Code 1882, § 159; Civil Code 1895, § 255; Civil Code 1910, § 290; Code 1933, § 89-413.)

JUDICIAL DECISIONS

Right of action against surety for breach of official duties. — A failure of a sheriff, by and through the deputy, to faithfully perform the duties of office, although the act may give rise to a cause of action *ex delicto*, constitutes a breach of the official bond given by the sheriff for the faithful perfor-

mance of the duties of the office, as required by O.C.G.A. § 45-4-21. A right of action against the surety for the breach of the bond arises *ex contractu*. *Powell v. Fidelity & Deposit Co.*, 48 Ga. App. 529, 173 S.E. 196 (1934).

RESEARCH REFERENCES

ALR. — Conduct contemplated by statute which makes neglect of duty by public of-

ficer or employee a punishable offense, 134 ALR 1250.

45-4-22. Performance by public officer of official act before bond approved and filed.

(a) No public officer required by law to give bond shall perform any official act before his bond is approved and filed as required.

(b) Any such public officer who shall perform any official act before his bond is approved and filed shall be guilty of a misdemeanor. (Orig. Code 1863, § 150; Code 1868, § 145; Code 1873, § 156; Code 1882, § 156; Ga. L. 1895, p. 63, § 2; Civil Code 1895, § 252; Penal Code 1895, § 272; Civil Code 1910, § 287; Penal Code 1910, § 275; Code 1933, §§ 89-410, 89-9902.)

JUDICIAL DECISIONS

Vacancy in office created by failure to file bond. — Where an election for Commissioner of Madison County, a legislative office, was held in November, at which an incumbent was reelected to such office, it was the incumbent's duty to file an official bond with the ordinary (now probate judge) on or before January 1; and, upon the

incumbent's personal failure to do so, a vacancy in the office resulted. *Compton v. Hix*, 184 Ga. 749, 193 S.E. 252 (1937).

Cited in *Century Indem. Co. v. Fidelity & Deposit Co.*, 175 Ga. 834, 166 S.E. 235 (1932); *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 47, 258.

45-4-23. Places for keeping bonds and copies of bonds.

All bonds taken from public officers shall be kept in the places specified by law and copies thereof shall be furnished to any person desiring them. (Orig. Code 1863, § 14; Code 1868, § 12; Code 1873, § 12; Code 1882, § 12; Civil Code 1895, § 12; Civil Code 1910, § 12; Code 1933, § 89-407.)

JUDICIAL DECISIONS

Provisions applicable only to certain public officers. — The provisions embraced in O.C.G.A. § 45-4-23 were intended to be applicable only to the public officers of this state who are required by general law to give bonds for the faithful performance of duties they owe to the public at large. *National Sur. Co. v. Seymour*, 177 Ga. 735, 171 S.E. 380 (1933); *Collins v. United States Fid. & Guar. Co.*, 72 Ga. App. 875, 35 S.E.2d 474 (1945).

O.C.G.A. § 45-4-23 does not apply to bonded officer of municipality. — O.C.G.A. § 45-4-23 does not have any application

whatever to a bonded officer of a municipality who is required, by special legislation relating to that municipality alone, to give such a bond as the mayor and council may deem necessary to the proper protection of the city itself. *Collins v. United States Fid. & Guar. Co.*, 72 Ga. App. 875, 35 S.E.2d 474 (1945).

Cited in *Talmadge v. McDonald*, 44 Ga. App. 728, 162 S.E. 856 (1932); *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 47.

45-4-24. Bond obligations of principal and surety; conditions required for existence of cause of action on bond.

(a) Every official bond executed under this chapter is obligatory on the principal and sureties thereon:

(1) For any breach of the condition during the time the officer shall continue in office or discharge any of the duties thereof;

(2) For any breach of the condition by a deputy, although not expressed in such bond, unless otherwise declared by law;

(3) For the faithful discharge of any duties which may be required of such officer by any law passed subsequent to the execution of such bond, although no such condition is expressed therein; or

(4) For the use and benefit of every person who is injured, either by any wrongful act committed under color of his office or by his failure to

perform or by the improper or neglectful performance of those duties imposed by law.

(b) No claim or cause of action shall exist against the bond, the surety, or the principal, and no claim or cause of action for indemnification by the surety against the principal shall exist, unless one of the following conditions exists:

(1) The principal personally benefits financially from the act complained of; or

(2) The principal was personally aware of and had actual knowledge of the act complained of; had actual knowledge that the act was illegal, contrary to law, or the breach of a duty imposed by law; and either acted to cause or failed to prevent the act complained of. (Orig. Code 1863, § 154; Code 1868, § 149; Code 1873, § 160; Code 1882, § 160; Civil Code 1895, § 256; Civil Code 1910, § 291; Code 1933, § 89-418; Ga. L. 1975, p. 1089, § 1; Ga. L. 1990, p. 8, § 45.)

Law reviews. — For article considering the public official's potential liability for funds, losses and torts, and suggesting insurance coverage, see 11 Mercer L. Rev. 288

(1960). For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
LIABILITY OF PUBLIC OFFICERS
LIABILITY OF SURETIES

General Consideration

O.C.G.A. § 45-4-24 applicable only to official bonds. — Under the provisions of this O.C.G.A. § 45-4-24, bonds of public officers are conditioned for the use and benefit of every person who is injured by the principal under color of office; but, as to statutory-penalty bonds which are not bonds of public officers, this provision does not apply, and a member of the public who is injured by the principal's failure to observe the conditions of the bond cannot sue the principal and sureties on such bond to collect damages for such wrongful act where the statute gives that person no right to bring such action. *Talmdage v. General Cas. Co. of Am.*, 88 Ga. App. 234, 76 S.E.2d 562 (1953); *Martin v. Hartford Accident & Indem. Co.*, 88 Ga. App. 236, 76 S.E.2d 564 (1953).

Acts entirely unauthorized not breach of bond. — Where a tax-collector, having no

authority of law whatever to make levies and sales under tax fi. fa., issued a fi. fa. purporting to be for taxes due, and placed it in the hands of another as the tax collector's deputy, who, "armed" with the fi. fa. and acting under the instructions of the tax-collector, seized property of the alleged taxpayer and sold it, to the owner's damage, it was held that such acts constituted no breach of the tax-collector's bond and the surety on the bond was not liable therefor. *Fidelity & Deposit Co. v. Smith*, 35 Ga. App. 744, 134 S.E. 801 (1926).

A deputy sheriff's use of racial epithets during a telephone conversation regarding the plaintiff did not give rise to a cause of action that would allow for recovery on the deputy's bond. *Booth v. Firemen's Ins. Co.*, 223 Ga. App. 243, 477 S.E.2d 376 (1996).

A deputy sheriff did not breach a deputy's bond in connection with an investigation of an altercation involving plaintiff and an

other since there was no evidence that the deputy had a duty under the law that ran specifically to the plaintiff. *Booth v. Firemen's Ins. Co.*, 223 Ga. App. 243, 477 S.E.2d 376 (1996).

Unless act constitutes breach of official duty. — Where an arresting officer, who has a prisoner under arrest, kills the prisoner unlawfully and without provocation, the officer commits a breach of official duty, and there is a liability upon the officer's official bond, to the statutory beneficiary of the dead man for damages for the homicide. *Powell v. Fidelity & Deposit Co.*, 45 Ga. App. 88, 163 S.E. 239 (1932).

Cited in *American Sur. Co. v. Robinson*, 53 F.2d 22 (5th Cir. 1931); *Talmadge v. McDonald*, 44 Ga. App. 728, 162 S.E. 856 (1932); *Maryland Cas. Co. v. Salmon*, 45 Ga. App. 173, 164 S.E. 80 (1932); *John Hancock Mut. Life Ins. Co. v. Rowland*, 178 Ga. 494, 173 S.E. 417 (1934); *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934); *Nesbit v. National Sur. Corp.*, 63 Ga. App. 518, 11 S.E.2d 667 (1940); *Creaser v. Durant*, 197 Ga. 531, 29 S.E.2d 776 (1944); *Standard Sur. & Cas. Co. v. Johnson*, 74 Ga. App. 823, 41 S.E.2d 576 (1947); *Walker v. Whittle*, 83 Ga. App. 445, 64 S.E.2d 87 (1951); *Irwin v. Arrendale*, 117 Ga. App. 1, 159 S.E.2d 719 (1967); *Fidelity-Phenix Ins. Co. v. Mauldin*, 118 Ga. App. 401, 163 S.E.2d 834 (1968); *Price v. Arrendale*, 119 Ga. App. 589, 168 S.E.2d 193 (1969).

Liability of Public Officers

"Color of office" defined. — "Color of office" is a pretense of official right to do an act, made by one who has no such right. *Luther v. Banks*, 111 Ga. 374, 36 S.E. 826 (1900); *Fidelity & Deposit Co. v. Smith*, 35 Ga. App. 744, 134 S.E. 801 (1926); *Jones v. Reed*, 58 Ga. App. 72, 197 S.E. 665 (1938); *Hawkins v. National Sur. Corp.*, 63 Ga. App. 367, 11 S.E.2d 250 (1940); *Goforth v. Fidelity & Cas. Co.*, 80 Ga. App. 121, 55 S.E.2d 656 (1949).

An officer's acts are done *colore officii* when they are of such a nature that the officer's official position does not authorize the doing of such acts though they are done in a form that purports they are done by reason of official duty and by virtue of office. *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Richards v. Amer-*

ican Sur. Co., 48 Ga. App. 102, 171 S.E. 924 (1933); *Jones v. Reed*, 58 Ga. App. 72, 197 S.E. 665 (1938); *Hawkins v. National Sur. Corp.*, 63 Ga. App. 367, 11 S.E.2d 250 (1940).

Sheriff liable for improper act of deputies. — An improper act done by sheriff's deputies under a pretended or supposed right, which does not exist, would as a *colore officii* act render sheriff liable to anyone aggrieved. *Hawkins v. National Sur. Corp.*, 63 Ga. App. 367, 11 S.E.2d 250 (1940).

Wrongful act during attempted arrest. — An officer shooting at the occupants of an automobile who have fled from an attempted arrest for a misdemeanor (illegal transportation of liquor) commits a wrongful act under color of office. *Copeland v. Dunehoo*, 36 Ga. App. 817, 138 S.E. 267 (1927).

Liability for injuries inflicted during performance of official duties. — O.C.G.A. § 45-4-24 providing that official bonds shall be for the benefit of persons injured by the principals must be read with the conditions of such bonds obligating the officials to well and truly perform the duties of their office, and refers to such liabilities as arise within the proper intendment of the obligation. *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Culpepper v. United States Fid. & Guar. Co.*, 199 Ga. 56, 33 S.E.2d 168 (1945).

Option to bring personal suit or action on official bond. — If a person has been injured and has suffered damage by any wrongful act committed by an officer under color of office, the person can sue such officer personally or upon the officer's official bond, and recover the amount of the damage. *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932); *Jones v. Reed*, 58 Ga. App. 72, 197 S.E. 665 (1938).

Suit for wrongful act by sheriff or deputy. — Suit may be brought upon the sheriff's bond for any wrongful act "committed under color of the his office" by the sheriff or a deputy, and such a bond is obligatory upon the principal and sureties thereon for the "use and benefit of every person who is injured" by such wrongful act. *Richards v. American Sur. Co.*, 48 Ga. App. 102, 171 S.E. 924 (1933).

One who is aggrieved by the official misconduct of a deputy sheriff may at their

Liability of Public Officers (Cont'd)

option sue either on the sheriff's bond or on the deputy's bond. *Aldridge v. Wooten*, 68 Ga. App. 887, 24 S.E.2d 700 (1943).

Sheriff liable for failure to take bond from deputy. — The sheriff is required by O.C.G.A. § 15-16-23 to take a bond from a deputy, and for failure to discharge the sheriff's duty in this respect may be held liable, even after the sheriff's retirement from office, by any person who has been injured. *Maryland Cas. Co. v. Smith*, 56 Ga. App. 154, 192 S.E. 449 (1937).

Suit by member of the public not authorized on nonofficial bond. — Where the instrument sued on in an action against a municipal police officer for false arrest, is not a statutory official bond, and consequently can be enforced only according to the terms and obligations stated in the bond, the terms of O.C.G.A. § 45-4-24 cannot be read into the bond so as to authorize a suit in favor of a member of the public. *Collins v. United States Fid. & Guar. Co.*, 72 Ga. App. 875, 35 S.E.2d 474 (1945) (decided under Code 1933, § 89-418 as it appeared prior to 1975).

Liability of Sureties

Sureties are chargeable with knowledge of the law, and of having executed official bonds with reference to the law. *Citizens' Bank v. American Sur. Co.*, 174 Ga. 852, 164 S.E. 817 (1932).

Sureties are chargeable with subsequent changes in the law. — By the proviso in O.C.G.A. § 45-4-24(a)(3) and similar provisions, a surety is given notice that on executing bond with the ordinary it would become liable for the faithful discharge of the duties of that officer under any law subsequently passed, and also that under some latter statute it might become liable for more than the injury actually sustained. It thus consented to become liable along with the officer whose duties and responsibilities were subject to change by law, thereby contracting for the future, to the extent of such changes as would be germane. *National Sur. Corp. v. Gatlin*, 192 Ga. 293, 15 S.E.2d 180 (1941).

Liability for wrongful acts of police officer. — The sureties upon the official bond of a police officer are liable for wrongful acts only when performed by virtue of office, or

under color of the police officer's office. *Hodge v. United States Fid. & Guar. Co.*, 42 Ga. App. 84, 155 S.E. 95 (1930).

Liability for wrongful acts of sheriff. — The sureties on the bonds of sheriffs of this state are liable to persons for injuries proximately resulting to them: (1) because of the failure of the sheriff to perform a duty imposed upon the sheriff by law; (2) because of the improper or neglectful performance of such a duty; and (3) for any wrongful act committed under color of the sheriff's office. *Goforth v. Fidelity & Cas. Co.*, 80 Ga. App. 121, 55 S.E.2d 656 (1949).

Liability for wrongful acts of deputy sheriff. — A failure of a sheriff, by and through a deputy, to faithfully perform the duties of office constitutes a breach of the official bond given by the sheriff for the faithful performance of the duties of office, and a right of action against the surety for the breach of the bond arises ex contractu in favor of any person aggrieved by such breach of the bond. *Powell v. Fidelity & Deposit Co.*, 48 Ga. App. 529, 173 S.E. 196 (1934); *Hawkins v. National Sur. Corp.*, 63 Ga. App. 417, 11 S.E.2d 250 (1940).

The official bond given by a sheriff, conditioned for the faithful performance of the duties of office, obligates the surety thereon for any breach of official duty by the sheriff's deputies, and this includes deputies de facto. *Powell v. Fidelity & Deposit Co.*, 45 Ga. App. 88, 163 S.E. 239 (1932).

The sureties on the official bond of a sheriff are liable for a breach of its condition by a deputy sheriff as well as by the sheriff directly. *Shelton v. Fidelity & Cas. Co.*, 86 Ga. App. 818, 72 S.E.2d 813 (1952).

Plaintiff bound by election of remedy. — Where the plaintiff had previously elected to sue on the bond of the sheriff, instead of on the deputy's bond, for the alleged wrongful acts of the sheriff and the deputy and had prosecuted that suit to judgment for an amount less than the penal sum of the sheriff's bond, as it did not appear that such judgment could not be satisfied (as in fact it had been), the plaintiff was bound by that election and was barred from maintaining a second present suit, on the deputy's bond, for the same damage and injury for which the plaintiff had previously recovered judgment against the surety on the sheriff's bond. *Shelton v. Fidelity & Cas. Co.*, 86 Ga. App. 818, 72 S.E.2d 813 (1952).

Extent of liability for compensated sureties. — The rule of “strict law” embodied in O.C.G.A. § 10-7-3, concerning the extent of a surety’s liability, does not apply to compensated sureties. *Busbee v. Reserve Ins. Co.*, 243 Ga. 371, 254 S.E.2d 324 (1979).

Official action causing liability for surety. — Where the director of the Board of Corrections failed to disgorge sums the director had received in the form of an unauthorized salary increase, this was an act for which

surety was held liable under a bond specifying indemnification for “loss caused to the insured through the failure of any of the employees, acting alone or in collusion, with others, to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment during the bond.” *Busbee v. Reserve Ins. Co.*, 243 Ga. 371, 254 S.E.2d 324 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 47, 286.

ALR. — Jurisdiction of action upon a bond of a public officer of another state or country, 26 ALR 1001.

Personal liability of public officer for refusing to grant application for license, 85 ALR 298.

Personal liability of officers to holders of invalid public money obligations, 87 ALR 273.

Liability on bond of public official or employee as affected by change in principal’s duties, 94 ALR 613.

Liability of officer charged with duty of keeping record of instruments affecting title to or interest in property for mistakes or defects in respect to records, 94 ALR 1303.

Liability of public officer or his bond for the defaults and misfeasances of his clerks, assistants, or deputies, 102 ALR 174; 116 ALR 1064; 71 ALR2d 1140.

Personal liability of public officer or sureties on his bond to property owner for failure to present, or delay in presenting, checks given in payment of taxes, 105 ALR 711.

Liability of sureties on bond of public officer as affected by fact that it was not signed by him, 110 ALR 959.

Liability of surety on official bond as affected by principal’s immunity from liability for malicious prosecution as an officer charged with duty of enforcing criminal laws, 116 ALR 1348.

Personal liability of public officer or sureties on his bond for nonperformance or improper performance of a duty imposed upon a board of corporate body of which he is a member, 123 ALR 756.

Personal liability of public officials or bond for permitting insurance company or other corporation to engage or continue in business without complying with statutory requirements, 131 ALR 275.

Liability on bond of public officer for second or other successive term in respect of funds received by principal during prior term, 132 ALR 1084.

Conduct contemplated by statute which makes neglect of duty by public officer or employee a punishable offense, 134 ALR 1250.

Liability on general bond of public officer for acts covered by a special bond, 140 ALR 1459.

Liability of public officer and his sureties in respect of payments made without compliance with procedure prescribed for payment of claims, 146 ALR 762.

Public officer’s bond as subject to forfeiture for malfeasance in office, 4 ALR2d 1348.

Personal liability of tax collector of state or its subdivision for illegal taxes collected, 14 ALR2d 383.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it, 2 ALR3d 822.

Liability of notary public or his bond for negligence in performance of duties, 44 ALR3d 555.

Liability of notary public or his bond for wilful or deliberate misconduct in performance of duties, 44 ALR3d 1243.

Uninvited entry into another’s living quarters as invasion of privacy, 56 ALR3d 434.

Governmental tort liability for injuries caused by negligently released individual, 6 ALR4th 1155.

45-4-25. Actions on bonds of public officers authorized; name in which action to be brought; jurisdiction.

Actions on bonds taken from public officers may be brought by any person aggrieved by the official misconduct of the officer, in his own name, in any court in this state having jurisdiction thereof, without an order for that purpose. No such action shall be instituted or maintained in any other state. Except as authorized in this Code section, actions on bonds taken from public officers shall be brought in the name of the Governor and by his written consent or by the written consent of the obligee named in such bond, for the use of such aggrieved person; provided, however, that no action on the bond of any public officer of the state to recover damages flowing to the state or the public on account of the official misconduct of such officer shall be instituted or maintained unless brought in the name of the Governor for the use of the state and by his written authorization. Any such action on the bond of any public officer of any county or other political subdivision of the state to recover damages flowing to such county or other political subdivision or the public shall not be instituted or maintained unless brought in the name of the obligee in such bond for the use of such political subdivision and by the written authorization of the governing body of such political subdivision. (Ga. L. 1853-54, p. 57, § 1; Orig. Code 1863, § 14; Code 1868, § 12; Code 1873, § 12; Code 1882, § 12; Civil Code 1895, § 12; Civil Code 1910, § 12; Code 1933, § 89-420; Ga. L. 1959, p. 411, § 1.)

Cross references. — Substitution of parties in action against public officer when officer dies, resigns, etc., during pendency of action, § 9-11-25.

Editor's notes. — Ga. L. 1959, p. 411, § 2, not codified by the General Assembly, provides that the Act shall be deemed to be remedial in nature and shall be given retrospective application. It shall apply to pending suits. The plaintiff in any action on the bond of any public officer of the State of

Georgia then pending in any court outside of the State of Georgia may dismiss such action and renew the same in any court of this state having jurisdiction thereof within six months from March 18, 1959. In default thereof, the privilege granted by this section by the state is withdrawn and such action shall abate. Any such renewal action shall be deemed to have been filed on the same date as any such original suit.

JUDICIAL DECISIONS

O.C.G.A. § 45-4-25 applies to the bond of every public officer. Maryland Cas. Co. v. Smith, 56 Ga. App. 154, 192 S.E. 449 (1937).

Who is required by general law to give a bond. — The provisions embraced in O.C.G.A. § 45-4-25 were intended to be applicable only to the public officers of this state who are required by general law to give bonds for the faithful performance of duties they owe to the public at large. National Sur.

Co. v. Seymour, 177 Ga. 735, 171 S.E. 380 (1933).

O.C.G.A. § 45-4-25 has no application to a bond required by a municipality alone. — The provisions embraced in O.C.G.A. §§ 45-4-23 and 45-4-25 were intended to be applicable only to the public officers of this state who are required by general law to give bonds for the faithful performance of duties they owe to the public at large. O.C.G.A.

§§ 45-4-23 and 45-4-25 are not, therefore, to be regarded as having any application whatever to a bonded officer of a municipality who is required, by special legislation relating to that municipality alone, to give such a bond as the mayor and council may deem necessary to the proper protection of the city itself. *Collins v. United States Fid. & Guar. Co.*, 72 Ga. App. 875, 35 S.E.2d 474 (1945).

Where the instrument sued on in an action against a municipal police officer for false arrest, is not a statutory official bond, and consequently can be enforced only according to the terms and obligations stated in the bond, the terms of the statute cannot be read into the bond so as to authorize a suit in favor of a member of the public. *Collins v. United States Fid. & Guar. Co.*, 72 Ga. App. 875, 35 S.E.2d 474 (1945) (decided under § 89-418 as it appeared prior to 1975).

O.C.G.A. § 45-4-25 inapplicable to any bond not required by law at time of its creation. — Where the bond was not required by statute or law at the time of its creation, it could not and did not “stand in the place of the official bond,” and a plaintiff cannot sue thereon in plaintiff’s own name as the “person aggrieved.” *National Sur. Co. v. Seymour*, 177 Ga. 735, 171 S.E. 380 (1933).

Judgment against officer not prerequisite to joint suit against surety and officer. — Under O.C.G.A. § 45-4-25 a joint suit can be brought against bond company and public officer without first obtaining a judgment against the tort-feasor, although there is no express provision authorizing a joint suit. *Laster v. Maryland Cas. Co.*, 46 Ga. App. 620, 168 S.E. 128 (1933).

An action on the bond against the officer and the surety is an action ex contractu. *Cantrell v. National Sur. Co.*, 46 Ga. App. 202, 167 S.E. 314 (1932).

Limitation on amount of liability of surety. — Where a public officer damages another by the officer’s acts *colore officii* or by official misconduct, the surety on official bond is not liable for any greater sum than the penal amount of the bond. *Cantrell v. National Sur. Co.*, 46 Ga. App. 202, 167 S.E. 314 (1932).

Summary execution against bank serving as county depository. — Where a bond was executed by a bank which had been legally designated as a depository to receive money for a county in which the treasurer has been abolished, and the bond was conditioned upon the faithful discharge of its duties as county depository and made payable to the ordinary of the county, the commissioner could issue a summary execution in the name of the county, against the bank as the depository and the sureties upon the bond, upon the failure of the bank to pay over county funds belonging to the county which had been deposited in the bank as the county depository. *Carter v. Veal*, 42 Ga. App. 88, 155 S.E. 64 (1930).

Cited in *American Sur. Co. v. Robinson*, 53 F.2d 22 (5th Cir. 1931); *Talmadge v. McDonald*, 44 Ga. App. 728, 162 S.E. 856 (1932); *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934); *Fleming v. United States Fid. & Guar. Co.*, 146 F.2d 128 (5th Cir. 1944); *Fidelity-Phenix Ins. Co. v. Mauldin*, 118 Ga. App. 401, 163 S.E.2d 834 (1968); *Busbee v. Reserve Ins. Co.*, 243 Ga. 371, 254 S.E.2d 324 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 480 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 297, 299, 303.

ALR. — Jurisdiction of action upon a bond of a public officer of another state or country, 26 ALR 1001.

Liability of public officer or his bond to public body in respect of fees or charges

which he illegally or improperly collected from members of public, 99 ALR 647.

Suit against public officer to recover possession of property as suit against state or federal government, 160 ALR 332.

What period of limitation governs in an action against a public officer and the surety on his official bond, 18 ALR2d 1176.

45-4-26. Institution of action on deputy's bond.

Any person who claims damages of any principal officer for the act of his deputy may, at his option, bring an action on the deputy's bond instead of on that of the principal, in the same manner as an action may be brought on the principal's bond. (Orig. Code 1863, § 158; Code 1868, § 153; Code 1873, § 164; Code 1882, § 164; Civil Code 1895, § 260; Civil Code 1910, § 295; Code 1933, § 89-427.)

JUDICIAL DECISIONS

Election by plaintiff of which bond to proceed upon. — One who is aggrieved by the official misconduct of a deputy sheriff may at their option sue either on the sheriff's bond or on the deputy's bond. *Aldridge v. Wooten*, 68 Ga. App. 887, 24 S.E.2d 700 (1943).

A plaintiff, alleging injury and damage by the wrongful acts of a sheriff and the sheriff's deputy under color of their offices, must elect to proceed either upon the sheriff's bond or upon the deputy's, and a plaintiff could not sue on the bonds of both officers in the same suit. *Shelton v. Fidelity & Cas. Co.*, 86 Ga. App. 818, 72 S.E.2d 813 (1952).

The bond of a public officer is a contract of suretyship. Such a contract is to be strictly construed in the interest of the surety. It follows, therefore, that the plaintiff cannot

proceed against both contracts of suretyship, the one executed with the sheriff and the one executed with the deputy, but such plaintiff must elect upon which contract to proceed. *Goforth v. Fidelity & Cas. Co.*, 80 Ga. App. 121, 55 S.E.2d 656 (1949).

Election by plaintiff bars a subsequent action for the same injury. — Where the plaintiff having exercised an option or having made an election to sue on the sheriff's bond instead of on that of the deputy, and having obtained satisfaction of the judgment rendered in that suit, cannot maintain a second suit on the deputy's bond for the same injury or damage. *Shelton v. Fidelity & Cas. Co.*, 86 Ga. App. 818, 72 S.E.2d 813 (1952).

Cited in *Creaser v. Durant*, 197 Ga. 531, 29 S.E.2d 776 (1944).

RESEARCH REFERENCES

ALR. — Liability of public officer or his bond for the defaults and misfeasances of his clerks, assistants, or deputies, 1 ALR 222; 102 ALR 174; 116 ALR 1064; 71 ALR2d 1140.

Suit against public officer to recover pos-

session of property as suit against state or federal government, 160 ALR 332.

What period of limitation governs in an action against a public officer and the surety on his official bond, 18 ALR2d 1176.

45-4-27. Effect of recovery on bond upon subsequent proceedings thereupon.

Official bonds of public officers shall not be discharged by a single recovery, but proceedings against the officer or his sureties or both may be had from time to time until the whole penalty is exhausted; and said bonds are joint and several whether or not so set forth. (Laws 1847, Cobb's 1851 Digest, p. 502; Code 1863, § 159; Code 1868, § 154; Code 1873, § 165; Code 1882, § 165; Civil Code 1895, § 261; Civil Code 1910, § 296; Code 1933, § 89-422.)

JUDICIAL DECISIONS

Cited in Maryland Cas. Co. v. Salmon, 45 Ga. App. 173, 164 S.E. 80 (1932).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 368.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 294.

45-4-28. Officer liable when bond penalty exhausted or invalid and when acting without bond.

When the penalty of the bond is exhausted, the officer himself shall still be liable for the same measure of damages as upon his bond; and he shall likewise be liable for any damage he may do in undertaking to discharge the duties of an office without having given the necessary bond or having given one that is invalid in whole or in part. (Orig. Code 1863, § 160; Code 1868, § 155; Code 1873, § 166; Code 1882, § 166; Civil Code 1895, § 262; Civil Code 1910, § 297; Code 1933, § 89-423.)

JUDICIAL DECISIONS

Plaintiff's recovery not limited to amount of bond. — The public officer would be personally liable in tort for any official misconduct or acts *colore officii* whereby the plaintiff was damaged, and the plaintiff would not be restricted in a recovery to the

amount of the officer's official bond. *Cantrell v. National Sur. Co.*, 46 Ga. App. 202, 167 S.E. 314 (1932).

Cited in Irwin v. Arrendale, 117 Ga. App. 1, 159 S.E.2d 719 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Personal liability beyond amount of bond. — A sheriff would be personally liable in the event of a judgment entered against the

sheriff in excess of the amount of the official bond. 1975 Op. Att'y Gen. No. U75-61.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 356, 363, 364, 492 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 290.

ALR. — Personal liability of public officer or sureties on his bond to property owner for failure to present, or delay in presenting, checks given in payment of taxes, 105 ALR 711.

Suit against public officer to recover possession of property as suit against state or federal government, 160 ALR 332.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it, 2 ALR3d 822.

45-4-29. Measure of damages in actions on official bonds.

The measure of damages recoverable in actions upon all official bonds for the misconduct of the officer, unless otherwise specially enacted, shall be the amount of injury actually sustained, including the reasonable expenses of the action to the plaintiff and the costs of court. In all cases when little or no damage is actually sustained and the officer has not acted in good faith, the jury may find for the plaintiff an amount as exemplary damages which, taking all the circumstances together, shall not be excessive or oppressive. (Orig. Code 1863, § 162; Code 1868, § 157; Code 1873, § 168; Code 1882, § 168; Civil Code 1895, § 264; Civil Code 1910, § 299; Code 1933, § 89-421; Ga. L. 1990, p. 8, § 45.)

History of section. — This section is derived partially from the decisions in *Taylor v. Johnson*, 17 Ga. 521 (1885); *Dobbs v. Justices of Murray County*, 17 Ga. 624 (1885).

Cross references. — Amount of judgments on bonds generally, § 9-12-13.

Law reviews. — For article on bond liability and righting the wrongs of Georgia local government officers, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

Plaintiff's recovery not limited to amount of officer's bond. — The public officer would be personally be liable in tort for any official misconduct or acts *colore officii* whereby the plaintiff was damaged and the plaintiff would not be restricted in a recovery to the amount of the officer's official bond. *Cantrell v. National Sur. Co.*, 46 Ga. App. 202, 167 S.E. 314 (1932).

Recovery of expenses limited to action under consideration. — Since O.C.G.A. § 45-4-29 provides for the awarding of expenses of the suit, including the costs of court, it is construed to mean the present damage suit under consideration, and not the previous litigation, therefore the plaintiff could not lawfully recover for two items of costs in previous litigation. *Talmadge v. McDonald*, 44 Ga. App. 728, 162 S.E. 856 (1932).

Sureties liable for misconduct of deputies. — The words "misconduct of the officer" as used in O.C.G.A. § 45-4-29 mean not only the misconduct of the sheriff, but also the misconduct of the sheriff's deputies who are the general agents of the sheriff to do and perform all acts which by law appertain to the office, and since the doctrine of respondeat superior applies, the liabilities of the sureties on the sheriff's bond are measured by that of the principal. *American Sur.*

Co. v. Smallon, 54 Ga. App. 45, 186 S.E. 892 (1936).

Sureties not liable for mere penalties imposed for dereliction of duties. — The liability of sureties on official bonds does not ordinarily include liability for mere penalties imposed upon the principals for a dereliction of official duties, but is limited to injury sustained. *National Sur. Corp. v. Gatlin*, 192 Ga. 293, 15 S.E.2d 180 (1941).

Measure of damages for sheriff's breach of official bond. — The measure of damages for the breach of the official bond of a sheriff is ordinarily the amount of injury actually sustained, including the reasonable expenses of the suit thereon and the costs of court. *Hartford Accident & Indem. Co. v. Young*, 40 Ga. App. 843, 151 S.E. 680 (1930).

Measure of damages includes necessary and reasonable attorney's fees. *Hartford Accident & Indem. Co. v. Young*, 40 Ga. App. 843, 151 S.E. 680 (1930).

No need to show bad faith for recovery of attorney's fees. — In a case arising under O.C.G.A. § 45-4-29 it is unnecessary to show bad faith, or the like, as a condition to the recovery of attorney's fees. *Hartford Accident & Indem. Co. v. Young*, 40 Ga. App. 843, 151 S.E. 680 (1930).

In a suit on a bond of a public officer for official misconduct, it is unnecessary to show

bad faith or the like as a condition to the recovery of attorney's fees, as is generally required in contract actions by O.C.G.A. § 13-6-11. *Glens Falls Indem. Co. v. Dempsey*, 68 Ga. App. 607, 23 S.E.2d 493 (1942).

What constitutes reasonable attorney fees is a question of fact. *Scruggs v. Dorminey*, 129 Ga. App. 453, 199 S.E.2d 922 (1973).

County not entitled to recover attorney's fees. — Where it was not shown by the evidence that the county suffered any injury or loss because of having to pay attorney's fees, the county was not entitled to recover attorney's fees under O.C.G.A. § 45-4-29. *Massachusetts Bonding & Ins. Co. v. Floyd County*, 178 Ga. 595, 173 S.E. 720 (1934).

What amounts to bad faith. — Any arbitrary omission by the officer to do that which is required of the officer by law, or any conscious disregard of the limitation upon the officer's authority, would amount to bad faith within the meaning of that term as employed in O.C.G.A. § 45-4-29. *Copeland v. Dunahoo*, 36 Ga. App. 817, 138 S.E. 267 (1927).

Recovery of reasonable expenses as well as exemplary damages. — O.C.G.A. § 45-4-29 is susceptible of the construction that where exemplary damages are awarded there can still be a recovery for the reasonable expenses of the suit to the plaintiff,

which necessarily includes attorney's fees. *Glens Falls Indem. Co. v. Dempsey*, 68 Ga. App. 607, 23 S.E.2d 493 (1942).

Attorneys' fees can be recovered in a suit for exemplary damages under O.C.G.A. § 45-4-29. *Sharpe v. Lowe*, 214 Ga. 513, 106 S.E.2d 28 (1958).

Instructions not prejudicial to defendant. — It is not prejudicial to the defendant for the court to charge the jury that to authorize a recovery for punitive or exemplary damages the jury must be satisfied that there was some wilful misconduct on the part of the officers, or that entire want of care by them which would give rise to the presumption of a conscious indifference to consequence, and that there must be evidence satisfactory to the jury either of malicious wantonness or of an oppression by the officers as against the plaintiff. *American Sur. Co. v. Smallon*, 56 Ga. App. 746, 194 S.E. 35 (1937).

Cited in *American Sur. Co. v. Citizens' Bank*, 48 Ga. App. 448, 172 S.E. 801 (1934); *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934); *Carlan v. Fidelity & Cas. Co.*, 55 Ga. App. 271, 190 S.E. 47 (1937); *American Sur. Co. v. Smith*, 55 Ga. App. 633, 191 S.E. 137 (1937); *Smith v. Glen Falls Indem. Co.*, 71 Ga. App. 697, 32 S.E.2d 105 (1944); *Fleming v. United States Fid. & Guar. Co.*, 146 F.2d 128 (5th Cir. 1944).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 492.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 290.

ALR. — Liability on bond of sheriff or other peace officer for unlawful search, 62 ALR 855.

Liability of surety on bond of law enforcement officer for punitive or exemplary damages, 64 ALR 934.

Personal liability of public officer or sureties on his bond to property owner for failure to present, or delay in presenting, checks given in payment of taxes, 105 ALR 711.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it, 2 ALR3d 822.

45-4-30. Applicability of chapter.

This chapter shall apply to the official bonds of all public officers of this state, including those whose offices may be established hereafter, unless the contrary is expressly provided. (Orig. Code 1863, § 163; Code 1868, § 158; Code 1873, § 169; Code 1882, § 169; Civil Code 1895, § 265; Civil Code 1910, § 300; Code 1933, § 89-401.)

JUDICIAL DECISIONS

Cited in *Matthews v. Rowell*, 49 Ga. App. 673, 176 S.E. 802 (1934); *Sims v. United States Fid. & Guar. Co.*, 115 Ga. App. 71, 153 S.E.2d 573 (1967).

CHAPTER 5

VACATION OF OFFICE

Sec.		Sec.	
45-5-1.	When offices deemed vacated; filling vacancy; notice; appeal.		mént; gubernatorial review if commission recommends suspension; suspension; reinstatement; replacement officer.
45-5-2.	Office to be vacated immediately upon final conviction of felony; filling of vacancy.	45-5-6.1.	Suspension and vacation of office of public officials convicted of felonies.
45-5-3.	Election or appointment of successor to fill unexpired terms.	45-5-6.2.	Suspension of "authority officials" upon indictment for felony offense; continued compensation; replacement officials.
45-5-3.1.	Authority to fill vacancy absent quorum; appointment by Governor to fill vacancy.	45-5-7.	Hearing of complaints against budget unit employees and proceedings thereupon; effect on tenure.
45-5-4.	Continuation in office of appointee during succeeding term.		
45-5-5.	To whom resignations to be made.		
45-5-6.	Public official investigated by special commission upon indict-		

Cross references. — Recall of public officials holding elective office, Ga. Const. 1983, Art. II, Sec. II, Para IV. Power of Governor to fill vacancies in office, Ga. Const. 1983, Art. V, Sec. II, Para. VIII. Substitution of parties in action against public officer when officer dies, resigns, etc., during pendency of action, § 9-11-25. Substitute nominations to fill vacancies in party nominations upon death, disqualification, etc., of nominee, § 21-2-134. Special elections and primaries,

§ 21-2-540 et seq. Recall of public officers, § 21-4-1 et seq. Delivery of books, papers, and other office property to successor to public office, § 45-6-7 et seq. Powers and duties of Governor with regard to appointment of officers and filling of vacancies in office, § 45-12-50 et seq.

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Recall election provisions may be invoked during official's appeal of felony conviction. — The recall election procedures of the "Public Officers Recall Act" O.C.G.A. § 21-4-1 et seq., may be invoked by electors

with respect to a public official notwithstanding the pendency of that official's appeal of a felony conviction. 1983 Op. Att'y Gen. No. 83-16.

45-5-1. When offices deemed vacated; filling vacancy; notice; appeal.

(a) All offices in the state shall be vacated:

- (1) By the death of the incumbent;
- (2) By resignation, when accepted;
- (3) By decision of a competent tribunal declaring the office vacant;

(4) By voluntary act or misfortune of the incumbent whereby he is placed in any of the specified conditions of ineligibility to office;

(5) By the incumbent ceasing to be a resident of the state or of the county, circuit, or district for which he was elected;

(6) By failing to apply for and obtain commissions or certificates or by failing to qualify or give bond, or both, within the time prescribed by the laws and Constitution of Georgia; or

(7) By abandoning the office or ceasing to perform its duties, or both.

(b) Upon the occurrence of a vacancy in any office in the state, the officer or body authorized to fill the vacancy or call for an election to fill the vacancy shall do so without the necessity of a judicial determination of the occurrence of the vacancy. Before doing so, however, the officer or body shall give at least ten days' notice to the person whose office has become vacant, except that such notice shall not be required in the case of a vacancy caused by death, final conviction of a felony, or written resignation. The decision of the officer or body to fill the vacancy or call an election to fill the vacancy shall be subject to an appeal to the superior court; and nothing in this subsection shall affect any right of any person to seek a judicial determination of the eligibility of any person holding office in the state. The provisions of this subsection shall apply both to vacancies occurring under this Code section and to vacancies occurring under other laws of this state. (Orig. Code 1863, § 131; Code 1868, § 126; Code 1873, § 135; Code 1882, § 135; Civil Code 1895, § 229; Civil Code 1910, § 264; Code 1933, § 89-501; Ga. L. 1986, p. 996, § 1.)

Cross references. — Vacating of offices by recall elections, Ch. 4, T. 21.

JUDICIAL DECISIONS

How vacancy occurs. — A vacancy may be caused either by a failure to elect the officer, the failure of the officer to qualify after election, or the officer's disqualification after both election and qualification. *Odom v. Jones*, 176 Ga. 147, 167 S.E. 304 (1932).

Application to office in political party. — O.C.G.A. § 45-5-1 must be construed as applying to an office in a political body or political party. *Belcher v. Harris*, 228 Ga. 387, 185 S.E.2d 771 (1971).

One resigns from an office, not a term of office. *Duncan v. Poythress*, 515 F. Supp. 327 (N.D. Ga.), *aff'd*, 657 F.2d 691 (5th Cir. 1981), *cert. dismissed*, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982).

An incumbent state officer properly resigns whatever term is remaining by a letter

to the Governor. *Duncan v. Poythress*, 515 F. Supp. 327 (N.D. Ga.), *aff'd*, 657 F.2d 691 (5th Cir. 1981), *cert. dismissed*, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982).

Georgia law does not contemplate or require serial or multiple resignations for an incumbent officeholder who has been re-elected to resign that officeholder's position. *Duncan v. Poythress*, 515 F. Supp. 327 (N.D. Ga.), *aff'd*, 657 F.2d 691 (5th Cir. 1981), *cert. dismissed*, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982).

Officeholder elected to new term not yet entered upon need not submit two letters of resignation. *Duncan v. Poythress*, 515 F. Supp. 327 (N.D. Ga.), *aff'd*, 657 F.2d 691 (5th Cir. 1981), *cert. dismissed*, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982).

Past offers to resign not continuing offers.

— A recital that a named officer on different occasions “has stated to me, as Governor of Georgia, that if I desired to accept his resignation I could do so, and that he would ‘go home,’” does not show a resignation, but merely discloses past offers to resign if the Governor then so desired. The statements so ascribed to the officer were not continuing offers, conditional or otherwise, and did not authorize future action thereon by the Governor. *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940).

Facts not constituting a resignation.

— Where an order of the Governor contained a specific recital of facts to show a resignation, and it appeared that the facts did not constitute a resignation in law, a declaration in the Governor’s order that “the resignation aforesaid ... is hereby accepted” does not show a vacancy created by the acceptance of a resignation. *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940).

Vacancy created by suspension of officer.

— A county board of education had the right to suspend the county superintendent of schools for the commission of a crime involving moral turpitude. If convicted of the charge, such official would lose all rights to the office to which the official had been elected. If acquitted, the official might serve the remainder of the term for which elected. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946).

Vacancies caused by change in residence.

— Only in the case of an incumbent ceasing to be a resident of the State of Georgia does the office immediately become vacant. In all other cases, the office does not become vacant until the vacancy is judicially ascertained. *Smith v. Ouzts*, 214 Ga. 144, 103 S.E.2d 567 (1958).

Change in residence by a justice of the peace.

— A person holding the office of justice of the peace in this state does not vacate the office by ceasing to be a resident of the district for which the person was elected, where the person continues to reside within the state, and where the fact of cessation of residence has not been judicially ascertained. *Long v. Carter*, 39 Ga. App. 508, 147 S.E. 401 (1929).

Change in residence by a county commissioner. — Although O.C.G.A. § 45-5-1(5) is applicable to county commissioners, where

the commissioners are elected from districts by the entire electorate of the county their office is not vacated by removing their residence from the area from which they were elected and into another area of the county, in the absence of such a specific provision of the local Act creating the board. *Chandler v. Strong*, 233 Ga. 143, 210 S.E.2d 690 (1974).

O.C.G.A. § 45-5-1(6) is mandatory and must be given effect, notwithstanding the hard consequences to the officer elect whose duty to the public was to give bond. *Compton v. Hix*, 184 Ga. 749, 193 S.E. 252 (1937).

Disregard for the requirements of O.C.G.A. § 45-5-1(6) amounts to a forfeiture by the respondent of any claim to the office. This would be especially true when it appears that, due to the respondent’s neglect and delay in filing any bond, another person has been named to the office and has qualified by taking the oath and making the bond required by law. *Robert v. Steed*, 207 Ga. 41, 60 S.E.2d 134 (1950).

Vacancy created by failure to file official bond. — Where an election for Commissioner of Roads and Revenues for Madison County, a legislative office, was held in November, at which an incumbent was re-elected to such office, it was the incumbent’s duty to file an official bond with the ordinary on or before January 1; and, upon the incumbent’s own personal failure to do so, a vacancy in the office resulted. *Compton v. Hix*, 184 Ga. 749, 193 S.E. 252 (1937).

No formal words of renunciation are contemplated as being required of the holder of an office where from any cause that person ceases to perform its duties. *Parkerson v. Hart*, 200 Ga. 660, 38 S.E.2d 397 (1946); *Thompson v. Nichols*, 208 Ga. 147, 65 S.E.2d 603 (1951).

Due process requirements for removal for abandonment. — Where the Governor wishes to remove an incumbent constitutional officer for reason of abandonment, notice and hearing are required for due process. *Partain v. Maddox*, 227 Ga. 623, 182 S.E.2d 450 (1971).

Due process requirements for removal for misconduct. — Under O.C.G.A. § 45-5-1 a mere charge of misconduct in office on the part of the incumbent does not show abandonment; nor may the Governor, against the will of the incumbent, declare a vacancy

upon any theory of abandonment until the fact is ascertained in a judicial proceeding. *Patten v. Miller*, 190 Ga. 123, 8 S.E.2d 757 (1940); *Partain v. Maddox*, 227 Ga. 623, 182 S.E.2d 450 (1971).

Abandonment caused by acquiescence in wrongful removal. — While acquiescence may be entirely different from abandonment, the abandonment of a public office may result from an acquiescence by the officer in wrongful removal or discharge; after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate rights may constitute an abandonment of the office, and the voluntary surrender of an office to another because of the erroneous belief that such other has been duly elected as successor to the surrendering officer may constitute an abandonment. *Thompson v. Nichols*, 208 Ga. 147, 65 S.E.2d 603 (1951).

Cited in *Wiley v. Douglas*, 168 Ga. 659, 148 S.E. 735 (1929); *Pearson v. Lee*, 173 Ga. 496, 160 S.E. 369 (1931); *Morris v. Hartsfield*, 186 Ga. 171, 197 S.E. 251 (1938); *Motes v. Davis*, 188 Ga. 682, 4 S.E.2d 597 (1939); *Britton v. Bowden*, 188 Ga. 806, 5 S.E.2d 47 (1939); *Lyons v. Brown*, 201 Ga. 143, 38 S.E.2d 837 (1946); *Poole v. Duncan*, 202 Ga. 255, 42 S.E.2d 731 (1947); *Hagood v. Hamrick*, 223 Ga. 600, 157 S.E.2d 429 (1967); *Bible v. Marra*, 226 Ga. 154, 173 S.E.2d 346 (1970); *Martin v. Moore*, 232 Ga. 842, 209 S.E.2d 182 (1974); *City of Atlanta v. League of Women Voters of Atlanta-Fulton County, Inc.*, 244 Ga. 796, 262 S.E.2d 77 (1979); *League of Women Voters of Atlanta-Fulton County, Inc. v. City of Atlanta*, 245 Ga. 301, 264 S.E.2d 859 (1980); *Henry County Bd. of Registrars v. Farmer*, 213 Ga. App. 522, 444 S.E.2d 877 (1994).

OPINIONS OF THE ATTORNEY GENERAL

No vacancy created by incumbent holding over. — Since none of the seven grounds mentioned in O.C.G.A. § 45-5-1 exist in the case of a hold-over, there is no vacancy in the office and the incumbent can legally perform the duties of the office until the incumbent's successor is appointed and qualified. 1963-65 Op. Att'y Gen. p. 216.

Withdrawal of resignation. — Unless a resignation is meant to be effective immediately (which a tender would not seem to be), it may be withdrawn before acceptance. 1963-65 Op. Att'y Gen. p. 581.

Illness of officer as ground for vacancy. — While illness of the officer is not specifically enumerated in the Georgia statute, in all probability the permanent illness of the officer might be construed by the Georgia courts to bring about a vacancy on the ground of incapacity; since it has been held that temporary imprisonment does not incapacitate, neither does temporary illness incapacitate for office. 1954-56 Op. Att'y Gen. p. 204.

State court judge must continue to maintain residency in county from which the judge is elected in order to retain the judge office and, if the judge fails to do so, then the office becomes vacant as a matter of law. 1995 Op. Att'y Gen. No. U95-6.

Determination of vacancy in office of justice of the peace. — Absence from the state,

without change of residence, does not vacate the office of justice of the peace until the vacancy has been judicially determined by a court of competent jurisdiction, but change of residence to another state vacates the office. 1945-47 Op. Att'y Gen. p. 79.

Where a justice of the peace removes from the militia district from which elected, the office becomes vacant. 1971 Op. Att'y Gen. No. U71-7.

Effect of member of county board of education living within city limits. — Members of a county board of education who because of an extension of the corporate limits of a city, find themselves residing within the territorial boundaries of an independent public school district, do not lose their membership on such board of education; they continue to hold office until removed by quo warranto proceedings. 1958-59 Op. Att'y Gen. p. 101.

Effect of county officer leaving area represented. — Construing O.C.G.A. § 45-5-1, a county officer legally elected to office who thereafter leaves from the geographical area represented does not ipso facto cease to hold such office, but is at least a "de facto" officer, and so remains until there is a judicial ascertainment of that fact; the rule is otherwise where the officer moves outside the state. 1954-56 Op. Att'y Gen. p. 71; 1958-59 Op. Att'y Gen. p. 101.

A member of the county board of education does not become disqualified merely by moving into another militia district, unless another member of said county board also resides in said militia district, or unless an independent school system is located therein. 1952-53 Op. Att'y Gen. p. 64.

Elected at-large official moving from district qualified from. — A county commissioner, who qualifies from a particular district in a county and is elected at-large, who moves residence from the district from which the commissioner qualified to another district in the county does not create a vacancy in that office. 1985 Op. Att'y Gen. No. 85-36.

Relinquishment of rights as member of state board. — A member of a state board who has not protested the eligibility of one elected to succeed that member, and who has yet failed to attend the regular meetings of the board, has relinquished rights as a member. 1948-49 Op. Att'y Gen. p. 214.

Vacancy created by prospective resignation. — If a vacancy is created by the pro-

spective resignation of a member of a local board of education, the board may move to fill that vacancy prior to the effective date of the resignation. 1999 Op. Att'y Gen. No. U99-8.

Absence from meetings as presumption of resignation. — The Board of Industry, Trade, and Tourism may include in its by-laws a provision specifying that any board member missing three or more consecutive meetings without discussing the reason for the absence with the chairman will be presumed to have resigned and that the chairman will notify the Governor of the resignation. 1991 Op. Att'y Gen. No. 91-18.

Reelection of Supreme Court Justice appointed to fill vacancy. — When the Governor appoints to fill a vacancy on the Supreme Court, the appointee must stand for reelection in the nonpartisan judicial primary and also during the next general election in November, which is more than six months after the appointment. 1992 Op. Att'y Gen. No. U92-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 110 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 74.

ALR. — Right to jury trial in proceeding for removal of public officer, 3 ALR 232; 8 ALR 1476.

Right of public officer to resign, 19 ALR 39.

When resignation of public officer becomes effective, 95 ALR 215.

Power to suspend or lay off public officers or employees for a temporary period with-

out pay as an economy and not a disciplinary measure, 111 ALR 432.

Induction or voluntary enlistment in military service as creating a vacancy in, or as ground of removal from, public office or employment, 143 ALR 1470; 147 ALR 1427; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Public officer's withdrawal of resignation made to be effective at future date, 82 ALR2d 750.

45-5-2. Office to be vacated immediately upon final conviction of felony; filling of vacancy.

Upon final conviction of a felony, the office of any state officer shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office caused by death or resignation. (Code 1933, § 89-505, enacted by Ga. L. 1964, p. 689, § 1.)

Cross references. — Crimes and other actions giving rise to ineligibility of person for party nomination for or election to public office, § 21-2-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 184 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 125.

ALR. — Unfitness as affecting right to restoration by mandamus to office from which one has been illegally removed, 36 ALR 508.

Power to remove public officer without notice and hearing, 99 ALR 336.

Reversal of conviction of crime as affect-

ing status of one removed from office, or whose license has been revoked because of the conviction, or facts involved in the prosecution, 106 ALR 644.

Conviction of offense under federal law or law of another state or country as vacating accused's holding of state or local office or as ground of removal, 20 ALR2d 732.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-5-3. Election or appointment of successor to fill unexpired terms.

(a) In those instances where the law applicable to an elective public office does not provide for filling a vacancy in such office and the Governor fills such vacancy pursuant to the authority of Article V, Section II, Paragraph VIII, subparagraph (a) of the Constitution and in those instances where the Governor fills a vacancy in the office of district attorney pursuant to Article VI, Section VIII, Paragraph I, subparagraph (a) of the Constitution, the vacancy shall be filled as follows:

(1) If the vacancy occurs during the final 27 months of a term of office, the Governor shall appoint a person to fill such vacancy for the remainder of the unexpired term of office; or

(2) If the vacancy occurs at any time prior to the time specified in paragraph (1) of this subsection, the Governor shall appoint a person to fill such vacancy until such vacancy is filled for the unexpired term of office at a special election provided for in subsection (b) of this Code section.

(b) When a special election is required to fill a vacancy for the unexpired term of office as provided by paragraph (2) of subsection (a) of this Code section, such special election shall be held on the same date as the general election which is first held following the date of the vacancy and in conjunction with such general election.

(c) It shall be the duty of the appropriate state or local election officials to call and conduct the special elections required by subsection (b) of this Code section in accordance with the applicable provisions of Chapter 2 of Title 21, known as the "Georgia Election Code." Any person elected to fill a vacancy pursuant to subsection (b) of this Code section shall possess the qualifications to seek and hold such office provided by law applicable to the office wherein the vacancy occurred.

(d) The provisions of this Code section shall not apply to a vacancy which occurs in any elective office of a municipality of this state. (Ga. L. 1872, p.

82, § 10; Code 1873, § 138; Code 1882, § 138; Civil Code 1895, § 230; Civil Code 1910, § 265; Code 1933, § 89-502; Ga. L. 1984, p. 1152, § 1; Ga. L. 1996, p. 166, § 2.)

Cross references. — Designation of interim successors in event of unavailability of state officers following emergency or disaster, § 38-3-50.

JUDICIAL DECISIONS

Cited in Hooper v. Almand, 196 Ga. 52, 25 S.E.2d 778 (1943).

OPINIONS OF THE ATTORNEY GENERAL

Limitation on term of appointee. — O.C.G.A. § 45-5-31 is a general statute and a close perusal of the same will reveal that it is merely a limitation upon the length of time that certain officials may be appointed; it does not authorize any official to appoint, but merely limits the term of those officers who do have statutory authority to appoint in specific instances. 1957 Op. Att'y Gen. p. 58.

Procedure for filling district attorney's office vacated by resignation. — A special election called by the Secretary of State is the proper procedure to fill the office of district attorney for the full four-year term beginning January 1, 1977, in the event the person elected to such office in the November 1976 general election has withdrawn. 1976 Op. Att'y Gen. No. 76-120.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 111 et seq., § 148.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 75, 76.

ALR. — Power of legislature to extend term of public office, 97 ALR 1428.

Election within contemplation of constitutional or statutory provisions relating to filling vacancy in public office occurring before expiration of regular term, 132 ALR 574.

Notice of election to fill vacancy in office at general election, 158 ALR 1184.

Vacancy in public office within constitutional or statutory provision for filling vacancy, where incumbent appointed or elected for fixed term and until successor is appointed or elected is holding over, 164 ALR 1248.

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body, 75 ALR2d 1277.

45-5-3.1. Authority to fill vacancy absent quorum; appointment by Governor to fill vacancy.

(a) When any local or general law authorizes or requires the remaining members of the governing body of a political subdivision of this state to appoint a person to fill a vacancy occurring in that body, the absence of a quorum caused by any such vacancy or vacancies shall not impair the authority of a majority of the remaining members of such body to make that appointment.

(b) When any local or general law provides for the appointment, other than appointment by the Governor, of a person to fill a vacancy in an elective public office and such vacancy is not filled within 45 days after the vacancy occurs, the Governor shall appoint a person to fill such vacancy. A person appointed by the Governor to fill a vacancy pursuant to this subsection shall serve until such time as that person would serve had the person been appointed as provided in that local or general law. (Code 1981, § 45-5-3.1, enacted by Ga. L. 1992, p. 1006, § 1.)

45-5-4. Continuation in office of appointee during succeeding term.

Where any person is appointed to fill a vacancy in the office of judge, district attorney, or clerk of any court in this state under a law which provides that such appointee shall fill the unexpired term, if at the end of such unexpired term the person elected to fill such office shall not be qualified to take office, or if the person elected to fill such office shall have died prior to the end of such unexpired term, or if a vacancy shall occur from any other cause, then the person appointed to fill out such unexpired term shall continue in office during the term succeeding the one in which such vacancy occurred, in the absence of any other law for filling such term. (Ga. L. 1911, p. 169, § 1; Code 1933, § 89-503.)

JUDICIAL DECISIONS

Cited in *Yaali, Ltd. v. Barnes & Noble, Inc.*,
269 Ga. 695, 506 S.E.2d 116 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 121.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 73.

ALR. — Beginning or expiration of term of elective officer where no time is fixed by law, 80 ALR 1290; 135 ALR 1173.

Right of one holding certificate of election to take office as against incumbent

whose term has expired, notwithstanding election contest, 81 ALR 620.

Notice of election to fill vacancy in office at general election, 158 ALR 1184.

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body, 75 ALR2d 1277.

45-5-5. To whom resignations to be made.

(a) The resignations of all state and county officers and senators and representatives of the State of Georgia in the United States Congress shall be made to the Governor. If the resignation is from an office which may not be filled by executive appointment of the Governor, the Governor shall, upon receiving the resignation, promptly notify the appropriate official of the state or county to fill the vacancy or to initiate the process for filling the vacancy according to law.

(b) The resignations of municipal officers shall be made to the governing authority of the municipality who shall fill the vacancies in accordance with law. (Orig. Code 1863, § 133; Code 1868, § 128; Code 1873, § 137; Code 1882, § 137; Civil Code 1895, § 232; Civil Code 1910, § 267; Code 1933, § 89-504; Ga. L. 1986, p. 996, § 2.)

JUDICIAL DECISIONS

Georgia law does not contemplate or require serial or multiple resignations for incumbent officeholder who has been re-elected to resign that position. *Duncan v.*

Poythress, 515 F. Supp. 327 (N.D. Ga.), aff'd, 657 F.2d 691 (5th Cir. 1981), cert. dismissed, 459 U.S. 1012, 103 S. Ct. 368, 74 L. Ed. 2d 504 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 114.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 102.

ALR. — Right of public officer to resign, 19 ALR 39.

Duress as ground for withdrawing or avoiding resignation from public office, 132 ALR 975.

45-5-6. Public official investigated by special commission upon indictment; gubernatorial review if commission recommends suspension; suspension; reinstatement; replacement officer.

(a) As used in this Code section, the term "public official" means any elected county officer; any elected member of a county governing authority; any elected member of a city-county consolidated government; any member of a county, area, or independent board of education; any school superintendent of a county, area, or independent school system; any solicitor-general of a state court; any elected member of any municipal governing authority; any member of the Public Service Commission; and any district attorney.

(b) Upon indictment for a felony by a grand jury of this state or by the United States, which felony indictment relates to the performance or activities of the office of any public official, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Governor who shall, subject to subsection (e) of this Code section, appoint a review commission. Except as provided in this subsection, the commission shall be composed of the Attorney General and two public officials who hold the same office as the individual indicted. The members of the commission shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with the investigation. The funds necessary to conduct the investigation shall come from funds appropriated to the executive branch of government. If the Attorney General brings the indictment against the public official, the Attorney General shall not serve on the commission. In place of the Attorney General, the Governor shall

appoint a retired Supreme Court Justice or a retired Court of Appeals Judge.

(c) Unless a longer period of time is granted by the Governor, the commission shall make a written report to the Governor within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby, the commission shall recommend that the public official be suspended from office. If, and only if, the commission recommends suspension, then the Governor shall review the findings and recommendations of the commission and may suspend the public officer from office immediately and without further action pending the final disposition of the case or until the expiration of his term of office, whichever occurs first. During the term of office to which such officer was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the public official shall be immediately reinstated to the office from which he was suspended. While a public official is suspended under this Code section and until initial conviction by the trial court, the public official shall continue to receive the compensation from his office. After initial conviction by the trial court, the public official shall not be entitled to receive the compensation from his office. If the public official is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this Code section.

(d)(1) For the duration of any suspension of any elected member of any municipal or consolidated city-county governing authority under this Code section, a replacement officer for the public officer suspended shall be appointed as provided for in any general law, local law, ordinance, or resolution governing the filling of a temporary vacancy in the public office affected. For the duration of any suspension of any other public official under this Code section, a replacement officer for the public official shall be appointed as provided for in any applicable general or local law governing the filling of a temporary vacancy in the public office affected. If no such general law, local law, ordinance, or resolution governing the filling of a temporary vacancy is applicable, then the Governor shall appoint a replacement officer for the public official suspended.

(2) Upon the final conviction, the office of the public official shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office.

(e) No commission shall be appointed for a period of 14 days from the day the Governor receives the indictment. This period may be extended by the Governor. During this period of time, the indicted public official may,

in writing, authorize the Governor to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this Code section for nonvoluntary suspensions.

(f) After any suspension under this Code section, the suspended public official may petition the Governor for a review. The Governor may reappoint the commission to review the suspension. The commission shall make a written report in 14 days. If the commission recommends that the public official be reinstated, he shall immediately be reinstated to office.

(g) The report and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The report and records of the commission shall not be open to the public.

(h) The provisions of this Code section shall not apply to any indictment handed down prior to January 1, 1985.

(i) If a public official who is suspended from office under the provisions of this Code section is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the public official shall be reinstated to office. The public official shall not be reinstated under this subsection if he is not so tried based on a continuance granted upon a motion made only by the defendant. (Code 1933, § 89-506, enacted by Ga. L. 1976, p. 277, § 1; Ga. L. 1984, p. 1279, § 1; Ga. L. 1986, p. 600, §§ 1, 2; Ga. L. 1996, p. 748, § 25.)

Cross references. — Procedures for and effect of suspension or removal of public officials upon felony indictment or conviction, Ga. Const. 1983, Art. II, Sec. III, Para. I.

Suspension of public officers upon conviction of felony, Ga. Const. 1983, Art. II, Sec. III, Para. II.

JUDICIAL DECISIONS

Constitutionality. — Suspension of an elected official who is under felony indictment under O.C.G.A. § 45-5-6 does not deprive either the elected official or the electorate of due process or equal protection, and it does not violate the separation of powers doctrine. *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d 854, appeal dismissed, 487 U.S. 1228, 108 S. Ct. 2889, 101 L. Ed. 2d 924 (1988).

The constitutional provision prohibiting a convicted felon from holding elective office does not preempt the provision in O.C.G.A. § 45-5-6 for the temporary suspension of an

elected official indicted for a felony. *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d 854, appeal dismissed, 487 U.S. 1228, 108 S. Ct. 2889, 101 L. Ed. 2d 924 (1988).

Suspension of an elected official who is under a felony indictment bears a rational relationship to a compelling state interest — that of ensuring the public's confidence in government. *Eaves v. Harris*, 258 Ga. 1, 364 S.E.2d 854, appeal dismissed, 487 U.S. 1228, 108 S. Ct. 2889, 101 L. Ed. 2d 924 (1988).

Cited in *LaPann v. State*, 167 Ga. App. 288, 306 S.E.2d 373 (1983).

OPINIONS OF THE ATTORNEY GENERAL

When a public official's initial conviction is set aside on appeal and a new trial ordered, that official is entitled to have his or her salary resumed and receive back compensation. 1991 Op. Att'y Gen. No. U91-14.

Recall election procedures may be invoked during official's appeal of felony conviction. — The recall election procedures of the "Public Officers Recall Act", O.C.G.A. § 21-4-1 et seq., may be invoked by electors

with respect to a public official notwithstanding the pendency of that official's appeal of a felony conviction. 1983 Op. Att'y Gen. No. 83-16.

Filling term of Henry County sheriff. — A special election must be held at the November 1984 general election to fill the remainder of the term of office of sheriff of Henry County. 1984 Op. Att'y Gen. No. 84-70.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 184 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 125.

ALR. — Constitutionality and construction of statute providing for payment of salary of public officer or employee during period of unlawful removal or suspension, or

expenses incurred by him in gaining reinstatement or in defending himself against charge of misconduct or incompetency in office, 103 ALR 763.

Conviction of offense under federal law or law of another state or country as vacating accused's holding of state or local office or as ground of removal, 20 ALR2d 732.

45-5-6.1. Suspension and vacation of office of public officials convicted of felonies.

(a) As used in this Code section, the term "public official" means any elected county officer; any elected member of a county governing authority; any elected member of a city-county consolidated government; any member of a county, area, or independent board of education; any school superintendent of a county, area, or independent school system; any solicitor-general of a state court; any elected member of any municipal governing authority; any member of the Public Service Commission; and any district attorney.

(b) Upon initial conviction of any public official for any felony in a trial court of this state or the United States, regardless of whether the public official has been suspended previously under Code Section 45-5-6, such public official shall be immediately and without further action suspended from office. While a public official is suspended from office under this Code section, he shall not be entitled to receive the compensation from his office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the public official shall be immediately reinstated to the office from which he was suspended and shall be entitled to receive any compensation withheld under the provisions of this Code section.

(c)(1) For the duration of any suspension of any elected member of any municipal or consolidated city-county governing authority under this Code section, a replacement officer for the public officer suspended shall

be appointed as provided for in any general law, local law, ordinance, or resolution governing the filling of a temporary vacancy in the public office affected. For the duration of any suspension of any other public official under this Code section, a replacement officer for the public official shall be appointed as provided for in any applicable general or local law governing the filling of a temporary vacancy in the public office affected. If no such general law, local law, ordinance, or resolution governing the filling of a temporary vacancy is applicable, then the Governor shall appoint a replacement officer for the public official suspended.

(2) Upon the final conviction, the office of the public official shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office.

(d) The provisions of this Code section shall not apply to any conviction rendered prior to January 1, 1987. (Code 1981, § 45-5-6.1, enacted by Ga. L. 1986, p. 600, § 3; Ga. L. 1996, p. 748, § 26.)

RESEARCH REFERENCES

ALR. — What constitutes conviction within statutory or constitutional provision making conviction of crime ground of dis- qualification for, removal from, or vacancy in, public office, 11 ALR5th 52.

45-5-6.2. Suspension of “authority officials” upon indictment for felony offense; continued compensation; replacement officials.

(a) As used in this Code section, the term:

(1) “Authority official” means any appointed member of a governing body of a local authority.

(2) “Local authority” includes without limitation instrumentalities of one or more local governments created to fulfill a specialized public purpose or any other legally created organization that has authority to issue debt for a public purpose independent of a county or municipality. The term does not include state authorities. Such local authorities may have been created by local constitutional amendment, general statute, or local law.

(b) Unless otherwise provided by general law, upon indictment of an authority official for a felony offense by a grand jury of this state or by the United States, the governing authority of the county or municipality that appointed the authority official may, by resolution entered on the minutes of the governing authority, suspend the authority official from the appointed office immediately and without further action pending the final disposition of the case or until the expiration of his or her appointed term of office, whichever occurs first. During the term of the office to which such

officer was appointed and in which the indictment occurred, if a nolle prosequi is entered, if the authority official is acquitted, or if, after conviction, the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the authority official shall be immediately reinstated to the office from which he or she was suspended. If the local authority is a joint authority or regional authority with appointments from more than one county, municipality, or combination of counties and municipalities, the governing authority of the county or municipality which was responsible for the appointment shall be authorized to suspend the indicted authority official.

(c) If the suspended authority official is compensated for his or her duties on behalf of the local authority, the authority official shall continue to receive the compensation from his or her office until a conviction. After a conviction, the authority official shall not be entitled to receive the compensation from his or her office. If the authority official is reinstated to office, he or she shall be entitled to receive any compensation withheld under the provisions of this Code section. For the purpose of this Code section, a plea of nolo contendere shall be considered a conviction.

(d) For the duration of any suspension of any authority official under this Code section, a replacement official for the authority official suspended shall be appointed as provided for in any general law, local law, ordinance, or resolution governing the filling of a temporary vacancy in the public office affected. If no such general law, local law, ordinance, or resolution governing the filling of a temporary vacancy is applicable, then the governing authority of the county or city responsible for the initial appointment shall appoint a replacement officer for the authority official suspended. Upon final conviction and after exhaustion of all appeals, if any, the office of the authority official shall be vacated immediately without further action. Said vacancy shall be filled by the replacement official appointed pursuant to this subsection for the balance of the appointed term of the convicted authority official. (Code 1981, § 45-5-6.2, enacted by Ga. L. 2001, p. 487, § 2.)

Effective date. — This Code section became effective April 20, 2001.

Cross references. — Indictments, Art.3, Ch. 7, T. 17. Miscellaneous offenses concerning public officers and employees, Ch. 11, T. 45.

Editor's notes. — Ga. L. 2001, 487, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may

be cited as the 'Corruption Prevention Act'".

Ga. L. 2001, 487, § 6, not codified by the General Assembly, provides that the provisions of this Code section shall not apply to any indictment handed down prior to April 20, 2001.

Law reviews. — Local Government Law, see 53 Mercer L. Rev. 389 (2001).

45-5-7. Hearing of complaints against budget unit employees and proceedings thereupon; effect on tenure.

Upon information being received that any individual employed by the state government is guilty or is alleged to be guilty of irregularities, misconduct, malpractice, malfeasance, misfeasance, incompetence, incapability, or inefficiency in the conduct of his or her official duties, the head of the budget unit, department, or agency employing said person shall be notified of such charges; and if the head of the budget unit, department, or agency takes the position that the charges are unfounded and fails or refuses to discharge the individual against whom the complaint is lodged, it shall be the duty of the Governor to hear the complaint and if, in his opinion, the facts sustain the truth of the accusation, the individual shall stand discharged from state service. Nothing in this Code section shall affect the tenure of office of the elected officials of this state, nor the tenure of office of appointed officials of this state who have been confirmed by the Senate as required by law, nor the tenure of office of those employees who are subject to merit system laws and rules and regulations. (Code 1933, § 40-424, enacted by Ga. L. 1962, p. 17, § 1.)

Cross references. — Restriction on power of Governor and Office of Planning and Budget to strike arbitrarily name of state employee from requisition for allotment of funds or from budget of budget unit, department, or agency of state government, § 45-12-94.

RESEARCH REFERENCES

ALR. — Personal liability of public officer for removing another officer or discharging employee, 4 ALR 1371. Conclusiveness of governor's decision in removing officers, 52 ALR 7; 92 ALR 998.

CHAPTER 5A

TEMPORARY DISABILITIES OF ELECTED
CONSTITUTIONAL EXECUTIVE
OFFICERS

Sec.		Sec.	
45-5A-1.	Certification of temporary disability by Supreme Court.		officers during temporary disability.
45-5A-2.	Lieutenant Governor exercising powers and duties of Governor during temporary disability.	45-5A-5.	Supreme Court to determine when temporary disability has ended; resumption of duties upon termination of temporary disability.
45-5A-3.	President Pro Tempore of the Senate exercising powers and duties of Lieutenant Governor during temporary disability.	45-5A-6.	Officer under temporary disability to receive compensation during disability.
45-5A-4.	Governor's appointment of persons to perform duties of other		

Editor's notes. — Ga. L. 1983, p. 1207, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article V, Section IV, Paragraph III of the Constitution of the State of Georgia."

45-5A-1. Certification of temporary disability by Supreme Court.

If, after hearing the evidence on the disability of an elected constitutional executive officer pursuant to Article V, Section IV of the Constitution of Georgia, the Supreme Court determines that such officer has a temporary disability, such court shall certify to the elected constitutional executive officers filing the petition that such executive officer has a temporary disability which prevents such officer from performing the duties of office. (Code 1981, § 45-5A-1, enacted by Ga. L. 1983, p. 1207, § 2.)

45-5A-2. Lieutenant Governor exercising powers and duties of Governor during temporary disability.

In case of the temporary disability of the Governor, the Lieutenant Governor shall exercise the powers and duties of the Governor as provided in Article V, Section I, Paragraph V of the Constitution of Georgia until such time as the temporary disability of the Governor ends. The Lieutenant Governor shall receive the same compensation as the Governor until such time as the temporary disability of the Governor ends. (Code 1981, § 45-5A-2, enacted by Ga. L. 1983, p. 1207, § 2.)

45-5A-3. President Pro Tempore of the Senate exercising powers and duties of Lieutenant Governor during temporary disability.

In case of the temporary disability of the Lieutenant Governor, the President Pro Tempore of the Senate shall exercise the powers and duties of the Lieutenant Governor and receive the same compensation as the Lieutenant Governor until such time as the temporary disability of the Lieutenant Governor ends. (Code 1981, § 45-5A-3, enacted by Ga. L. 1983, p. 1207, § 2.)

45-5A-4. Governor's appointment of persons to perform duties of other officers during temporary disability.

(a) In case of the temporary disability of the Secretary of State, the Attorney General, the State School Superintendent, the Commissioner of Insurance, the Commissioner of Agriculture, or the Commissioner of Labor, the Governor shall appoint a person to perform the duties of such elected constitutional executive officer until such time as the temporary disability of such officer ends.

(b) The person appointed to perform the duties of an elected constitutional executive officer as provided in subsection (a) of this Code section shall have the qualifications to hold such office, shall give bond with good security if required of a person elected to such office, and shall take the oath of office. The person appointed to serve in the office of an incapacitated elected constitutional executive officer named in subsection (a) of this Code section shall be subject to the confirmation of the Senate if the Senate is in session at the time of his appointment or convenes in session prior to the expiration of his appointment. Any such appointment made at times when the Senate is not in session shall be effective ad interim. The person appointed to perform the duties of an elected constitutional executive officer shall be authorized to perform every act and exercise every prerogative and discretion that a person holding such office is authorized to perform or exercise under existing law. Such person shall be entitled to receive the compensation as may be provided by law for such office during the period of incapacity of the elected constitutional executive officer. (Code 1981, § 45-5A-4, enacted by Ga. L. 1983, p. 1207, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "Commissioner of Insurance" was substituted for "Insurance Commissioner" in subsection (a).

45-5A-5. Supreme Court to determine when temporary disability has ended; resumption of duties upon termination of temporary disability.

(a) The Supreme Court shall determine when the temporary disability of an elected constitutional executive officer has ended and when the officer

shall resume the exercise of the powers of office. The Supreme Court may hold hearings for such purpose.

(b) Upon the Supreme Court certifying that the disability of an elected constitutional executive officer has ended, the appointment of the person performing the duties of such officer shall terminate. The elected constitutional executive officer shall thereafter assume and perform the duties of his office. (Code 1981, § 45-5A-5, enacted by Ga. L. 1983, p. 1207, § 2.)

45-5A-6. Officer under temporary disability to receive compensation during disability.

Whenever an elected constitutional executive officer is unable to exercise the duties of office due to a temporary disability and another person exercises the duties of office as provided in this chapter, during the period of disability the elected constitutional executive officer shall be entitled to receive the compensation as may be provided by law for such office. (Code 1981, § 45-5A-6, enacted by Ga. L. 1983, p. 1207, § 2.)

CHAPTER 6

POWERS AND DUTIES GENERALLY

Sec.		Sec.	
45-6-1.	“Books, papers, and other office property” defined.	45-6-10.	Duty of incumbent to deliver office property to successor — Hearing on show cause order; arrest of person who fails to comply; search for and seizure of office property.
45-6-2.	Fiscal year for all state government units; duty of officers to keep accounts in accordance with fiscal year generally.	45-6-11.	Duty of incumbent to deliver office property to successor — Proceedings by successor against person refusing to deliver office property.
45-6-3.	Official reports to conform with fiscal year.	45-6-12.	Duty of incumbent to deliver office property to successor — Director of Division of Archives and History to act as agent when office abolished or no successor appointed.
45-6-4.	Mailing of annual reports to General Assembly members.	45-6-13.	Duty of incumbent to deliver office property to successor — Retiring officers liable for costs of office property upon failure to deliver.
45-6-5.	Source of powers of public officers generally; public not estopped by acts of officer exercising unconferrred power.	45-6-14.	Duty of incumbent to deliver office property to successor — Failure of officer to deliver office property.
45-6-6.	Office property kept by officers subject to inspection by citizens.		
45-6-7.	Duty of incumbent to deliver office property to successor — Generally.		
45-6-8.	Duty of incumbent to deliver office property to successor — Duties of retiring judicial or ministerial officers or state’s attorneys.		
45-6-9.	Duty of incumbent to deliver office property to successor — Person in possession to deliver office property when incumbent deceased or cannot be found.		

45-6-1. “Books, papers, and other office property” defined.

As used in this chapter, the term “books, papers, and other office property” shall include, but not be limited to, all books, plates, pictures, photographs, films, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, personal papers, organization records, documents, letters, public records, and microforms; sound recordings; audiovisual materials in any format; magnetic or other tapes; electronic data processing records; artifacts; or other documentary, written, or printed material, regardless of physical form or characteristics belonging to, on loan to, or otherwise in the custody of any public office. (Code 1933, § 89-605.1, enacted by Ga. L. 1977, p. 567, § 1.)

45-6-2. Fiscal year for all state government units; duty of officers to keep accounts in accordance with fiscal year generally.

The fiscal year for this state and for all units of the state government shall commence on July 1 and end on June 30 of each year, and all public officers

of this state shall keep their official accounts in accordance therewith. The fiscal year shall be uniform for all state departments, boards, bureaus, commissions, institutions, and other agencies. (Ga. L. 1880-81, p. 29, § 1; Code 1882, § 79a; Civil Code 1895, § 202; Civil Code 1910, § 231; Code 1933, § 89-901; Ga. L. 1937, p. 456, §§ 1, 3.)

Cross references. — Establishment of fiscal year for counties, municipalities, etc., § 36-81-3.

OPINIONS OF THE ATTORNEY GENERAL

The words “all public officers of this state” includes public officers of local school districts. 1957 Op. Att’y Gen. p. 114.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, § 512. **C.J.S.** — 85 C.J.S., Taxation, § 1697.

45-6-3. Official reports to conform with fiscal year.

The year for official reports shall be coincident with the fiscal year, and it shall be the duty of the public officers of this state to make and publish annually their official reports for the period commencing on July 1 and ending on June 30 of each year, inclusive. All public officers shall conform to the fiscal year as established in Code Section 45-6-2 in reporting and recording the financial operations of their respective offices and departments. (Ga. L. 1880-81, p. 29, § 2; Code 1882, § 79a; Civil Code 1895, § 233; Ga. L. 1903, p. 25, § 1; Civil Code 1910, § 268; Code 1933, § 89-902; Ga. L. 1937, p. 456, §§ 2, 4.)

45-6-4. Mailing of annual reports to General Assembly members.

Each state official directed by law to file an annual report shall send by inter-office mail a notification that such report is available upon request to each member of the General Assembly at his legislative office at the state capitol, on or before June 1 of each year. (Ga. L. 1917, p. 998; Code 1933, § 40-1701; Ga. L. 1991, p. 1125, § 1.)

45-6-5. Source of powers of public officers generally; public not estopped by acts of officer exercising unconferrred power.

Powers of all public officers are defined by law and all persons must take notice thereof. The public may not be estopped by the acts of any officer done in the exercise of an unconferrred power. (Civil Code 1895, § 268; Civil Code 1910, § 303; Code 1933, § 89-903.)

History of section. — This section is derived from the decision in Penitentiary Co. No. 2 v. Gordon, 85 Ga. 159, 11 S.E. 584 (1890).

Cross references. — Liability of public agents on public contracts, § 10-6-88.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION POWERS OF PUBLIC OFFICERS ESTOPPEL

General Consideration

Teachers' retirement system is public body to which O.C.G.A. § 45-6-5 applies. Tate v. Teachers' Retirement Sys., 257 Ga. 365, 359 S.E.2d 649 (1987).

City not liable on void contract. — A municipality cannot be held liable upon an implied contract for the value of any benefits received by it under a contract made with one of its officials, where the municipality is expressly forbidden to make such a contract; such a contract, being void, cannot be ratified by an acceptance or use by the municipality of the benefits furnished thereunder. Caldwell v. City of Rome, 44 Ga. App. 665, 162 S.E. 829 (1932).

Lien on property acquired by city at tax sale. — The title acquired by a city at a tax sale is the same as that any individual would have obtained; that is, it obtains title subject to the lien of the special assessment. It is authorized to convey no better title than it holds. It may not by merely reselling the property divest the lien of the assessment; for to allow this would provide a method for vitiating the provision making this lien "co-equal" with the lien of other taxes. Steele v. City of Waycross, 190 Ga. 816, 10 S.E.2d 867 (1940).

Cited in Anchor Duck Mills v. Maddox, 171 Ga. 495, 156 S.E. 192 (1930); Maddox v. Highway Iron Prods. Co., 172 Ga. 131, 157 S.E. 269 (1931); Harrison v. Southern Ry., 44 Ga. App. 49, 160 S.E. 656 (1931); Barber v. Robinson, 178 Ga. 721, 174 S.E. 344 (1934); State Revenue Comm'n v. NABISCO, 179 Ga. 90, 175 S.E. 368 (1934); Carter v. Johnson, 186 Ga. 167, 197 S.E. 258 (1938); City of Jefferson v. Holder, 195 Ga. 346, 24 S.E.2d 187 (1943); Thompson v. Talmadge, 201 Ga. 867, 41 S.E.2d 883 (1947); Southern Ry. v. Wages, 203 Ga. 502, 47 S.E.2d 501

(1948); Bagwell v. Cash, 207 Ga. 222, 60 S.E.2d 628 (1950); Northington v. Candler, 211 Ga. 410, 86 S.E.2d 325 (1955); Staub v. City of Baxley, 91 Ga. App. 650, 86 S.E.2d 712 (1955); Hunter v. City of Atlanta, 212 Ga. 179, 91 S.E.2d 338 (1956); McCallum v. Almand, 213 Ga. 701, 100 S.E.2d 924 (1957); Board of Comm'rs v. Clay, 214 Ga. 70, 102 S.E.2d 575 (1958); Laurens County v. Keen, 214 Ga. 32, 102 S.E.2d 697 (1958); Russell v. City of Rome, 98 Ga. App. 653, 106 S.E.2d 339 (1958); Atlantic Co. v. Moseley, 215 Ga. 530, 111 S.E.2d 239 (1959); Peek v. City of Albany, 101 Ga. App. 564, 114 S.E.2d 451 (1960); Day v. Kelley, 218 Ga. 688, 130 S.E.2d 206 (1963); Gruber v. Fulton County, 111 Ga. App. 71, 140 S.E.2d 552 (1965); City of Jonesboro v. Shaw-Lightcap, Inc., 112 Ga. App. 890, 147 S.E.2d 65 (1966); Sutton v. City of Cordele, 230 Ga. 681, 198 S.E.2d 856 (1973); Blackmon v. Georgia Indep. Oilmen's Ass'n, 129 Ga. App. 171, 198 S.E.2d 896 (1973); Stone Mt. Scenic R.R. v. Stone Mt. Mem. Ass'n, 230 Ga. 800, 199 S.E.2d 216 (1973); Mousetrap of Atlanta, Inc. v. Blackmon, 129 Ga. App. 805, 201 S.E.2d 330 (1973); Tift v. Tift County Bd. of Tax Assessors, 234 Ga. 155, 215 S.E.2d 3 (1975); Johnson v. Caldwell, 148 Ga. App. 617, 251 S.E.2d 837 (1979); City of Atlanta v. Bull, 161 Ga. App. 648, 288 S.E.2d 335 (1982); Corey Outdoor Adv., Inc. v. Board of Zoning Adjustments, 254 Ga. 221, 327 S.E.2d 178 (1985); Exposition Enters., Inc. v. George L. Smith II Ga. World Congress Ctr. Auth., 177 Ga. App. 211, 338 S.E.2d 726 (1985); Jones v. Ward, 201 Ga. App. 757, 412 S.E.2d 576 (1991); Hibbs v. City of Riverdale, 227 Ga. App. 889, 490 S.E.2d 436 (1997); McDilda v. Board of Comm'rs, 230 Ga. App. 530, 497 S.E.2d 25 (1998); Miller v. Clayton County, 271 Ga. 135, 518 S.E.2d 402 (1999); Info. Sys. & Networks Corp. v. City of Atlanta, 281 F.3d 1220 (11th Cir. 2002).

Powers of Public Officers

“Unconferred power” refers to powers of municipality rather than officer. — Except when the municipality’s ability to exercise its governmental powers is itself threatened by the unauthorized action of a municipal officer, the term “unconferred power” as used in O.C.G.A. § 45-6-5 has traditionally been interpreted as referring to the powers of the municipality rather than the powers of the officer. *Star Laundry, Inc. v. City of Warner Robins*, 189 Ga. App. 839, 377 S.E.2d 709, rev’d on other grounds, 259 Ga. 348, 381 S.E.2d 38 (1989).

Persons dealing with a public officer must take notice of the extent of the officer’s powers at their peril. *Wood v. Puritan Chem. Co.*, 178 Ga. 229, 172 S.E. 557 (1934); *Morris Plan Bank v. Simmons*, 201 Ga. 157, 39 S.E.2d 166 (1946); *Malcolm v. Webb*, 211 Ga. 449, 86 S.E.2d 489 (1955); *City of Calhoun v. Holland*, 222 Ga. 817, 152 S.E.2d 752 (1966).

The trial court properly entered judgment n.o.v. against plaintiffs, golf professionals who alleged that they had an oral contract with a city to provide services on the city’s golf courses, which contract was breached when the golf courses were leased to another, where plaintiffs failed to show that the alleged contract was authorized. *Cole v. City of Atlanta*, 195 Ga. App. 67, 392 S.E.2d 283 (1990).

City attorneys are public officers within the meaning of O.C.G.A. § 45-6-5 and plaintiffs in an action against the city had a duty to apprise themselves of the attorneys’ capacity to bind the city to a settlement contract; even though an express restriction on a city attorney’s right to settle a cause of action, embodied in a municipal ordinance, was not communicated by the city or its attorney to plaintiffs, they were presumptively charged with knowledge of the ordinance. *Black v. City of Atlanta*, 61 F.3d 27 (11th Cir. 1995).

Trial court did not err in charging jury that the city attorney, as the city’s agent, bound the city through the attorney’s conduct, as the charge contained a correct statement of the law pursuant to O.C.G.A. § 45-6-5 and the city failed to point to a specific limitation on the city attorney’s authority that would have required a different charge under the facts and theories of the case. *City of Columbus v. Barngrover*, 250

Ga. App. 589, 552 S.E.2d 536 (2001).

Public administrative officers cannot change the laws. — The state is bound only by its laws, and everyone must take notice thereof and recognize that public administrative officers cannot change the laws. *Henderson v. Carter*, 229 Ga. 876, 195 S.E.2d 4 (1972); *P.C. Gailey Contractors v. Exxon Co.*, 143 Ga. App. 827, 240 S.E.2d 208 (1977); *Roberts v. Tomlinson, Inc.*, 242 Ga. 804, 251 S.E.2d 543 (1979).

Allegation of agency insufficient. — While generally an allegation of agency is sufficient to withstand both general and special demurrer (now motion to dismiss), such is not true in cases involving the powers and duties of public officials where the agent is without authority of law to act. *Ingalls Iron Works Co. v. City of Forest Park*, 99 Ga. App. 706, 109 S.E.2d 835 (1959).

Misrepresentations not generally basis for fraud action. — Misrepresentations by a public officer as to that officer’s powers and as to questions of law generally do not give rise to an action for fraud. *Garrison v. Department of Transp.*, 240 Ga. 840, 242 S.E.2d 615 (1978).

Power conferred by unconstitutional Act. — A power conferred by a legislative Act, which act violates the Constitution, is an “unconferred power” within the meaning of O.C.G.A. § 45-6-5. *Richmond County v. Pierce*, 234 Ga. 274, 215 S.E.2d 665 (1975).

Leasing of certain county property prohibited. — The county board cannot, in the absence of statutory authority, make a lease of any part of the county property used or useful for county purposes. *Killian v. Cherokee County*, 169 Ga. 313, 150 S.E. 158 (1929).

City cannot compel general contractor to enter into subcontract with particular company. — Company listed as a “potential subcontractor” in a bid on a contract with a city could not reasonably rely on city officials’ assertions that the city could, on the basis of the listing, compel the general contractor to enter into the subcontract with the company, since city officials cannot establish a duty on the part of the city where none exists by law. *Southeast Grading, Inc. v. City of Atlanta*, 172 Ga. App. 798, 324 S.E.2d 776 (1984).

City attorney’s authority limited by ordinance. — A public sector attorney’s author-

ity, like that of any other public officer, is defined and prescribed by law, including municipal ordinances; thus, a city and police officers who had entered a settlement agreement executed by city attorneys on their behalf were not estopped from challenging the agreement on the basis that a city ordinance restricted the apparent authority of the attorneys to execute the agreement, even though the ordinance was not specifically communicated to the opposing party. *City of Atlanta v. Black*, 265 Ga. 425, 457 S.E.2d 551 (1995).

Promulgation of rules. — Even if a state department employee manual given to all employees did purport to establish procedural protections for employees, its promulgation was beyond the authority of the director of the department and could not bind the city. *Sykes v. City of Atlanta*, 235 Ga. App. 345, 509 S.E.2d 395 (1998).

Estoppel

The public is not estopped by the unauthorized acts of its agents. *County Comm'r's v. O'Neal*, 38 Ga. App. 158, 142 S.E. 914 (1928).

Public is not estopped by any subsequent acts of the board of commissioners in recognizing an old line between two districts as the correct dividing line, had the district lines been changed in compliance with the requirements of law. *Camp v. Trapp*, 209 Ga. 298, 71 S.E.2d 534 (1952).

The state cannot be estopped by the unauthorized actions of its agents or officials, be they negligent or intentional in character. *P.C. Gailey Contractors v. Exxon Co.*, 143 Ga. App. 827, 240 S.E.2d 208 (1977).

Where transfer of a prisoner was not made pursuant to any order of court, being the result of some informal arrangement between the state and federal officers, it is immaterial that the state officers may have acted improperly in this matter, since the state would not be bound by the act of such officers in releasing the prisoner without authority of law and the case is the same as though the prisoner had escaped from the custody of the state officers. *Jordan v. State*, 41 Ga. App. 779, 154 S.E. 725 (1930).

Where a state agent or official mistakenly paid medicaid benefits to a nursing home which had previously been given official notice by the state that medicaid participa-

tion benefits would be discontinued, the state was not estopped from recovering those benefits erroneously paid. *Department of Pub. Health v. Perry*, 123 Ga. App. 816, 182 S.E.2d 493 (1971).

The state is not estopped by the unauthorized acts of its agents, whether they are negligent or intentional in nature. *Ben Hill County Bd. of Educ. v. Davis*, 270 Ga. 452, 510 S.E.2d 826 (1999).

The state cannot be estopped by unauthorized statements. — No officer, agent, or employee of the state or the Highway Department is authorized to erroneously represent the State's ownership of land and bind the state by such misrepresentation. *Waller v. State Hwy. Dep't*, 218 Ga. 605, 129 S.E.2d 772 (1963).

The state is not estopped by statements made by the state veterinarian where the statements are not made in the exercise of any legal authority. *Gill v. Cox*, 163 Ga. 618, 137 S.E. 40 (1927).

A county could not be estopped by the unauthorized actions of the human resources director in entering into an alleged settlement agreement pertaining to the termination of a police officer. *Maner v. Chatham County*, 246 Ga. App. 265, 540 S.E.2d 248 (2000).

City was not estopped from exercising eminent domain powers on the basis of unauthorized statements of its agent to purchasers of city property about the city's intentions regarding condemnation. *City of Marietta v. Edwards*, 271 Ga. 349, 519 S.E.2d 217 (1999).

The state can only be estopped from asserting her right to her own property by legislative enactment or resolution. *Standard Oil Co. v. State Revenue Comm'n*, 179 Ga. 371, 176 S.E. 1 (1934); *Waller v. State Hwy. Dep't*, 218 Ga. 605, 129 S.E.2d 772 (1963); *Henderson v. Carter*, 229 Ga. 876, 195 S.E.2d 4 (1972); *P.C. Gailey Contractors v. Exxon Co.*, 143 Ga. App. 827, 240 S.E.2d 208 (1977).

A governing authority may not be estopped regarding an ultra vires act. *City of Warner Robins v. Rushing*, 259 Ga. 348, 381 S.E.2d 38 (1989).

City was not estopped from relying on a provision of the city charter authorizing nonrenewal of the term of the chief of police, even though the city had not abided

Estoppel (Cont'd)

by all the terms of its charter in the past. *City of Buchanan v. Pope*, 222 Ga. App. 716, 476 S.E.2d 53 (1996).

In a case involving the performance of insurance consulting services pursuant to an oral agreement with city officers who did not have authority to make the agreement, the unauthorized nature of the contract precluded the consultants from asserting estoppel against the city. *Walston & Assocs. v. City of Atlanta*, 224 Ga. App. 482, 480 S.E.2d 917 (1997).

Detrimental reliance, which is a necessary element of any claim of equitable estoppel, is not a factor where estoppel cannot be applied as a matter of law. *City of Warner Robins v. Rushing*, 259 Ga. 348, 381 S.E.2d 38 (1989).

Employees retirement system was estopped from denying benefits as established prior to a judge's retirement, where the judge had relied upon the system's calculation of benefits prior to the time of submitting resignation and the calculated benefits were paid to the judge for a period of time after retirement. *Quillian v. Employees' Retirement Sys.*, 259 Ga. 253, 379 S.E.2d 515 (1989).

City not estopped from recovering water and sewer charges. — City was not estopped from recovering the difference between the amount charged customers for water and sewer services under an unauthorized agreement with the mayor, and the amount required by a new rate ordinance. *City of Warner Robins v. Rushing*, 259 Ga. 348, 381 S.E.2d 38 (1989).

A voluntary payment of taxes returned in the wrong county is not a ground to estop the proper county from collecting the tax on said property wherein the personalty is used in business. *Macon Coca-Cola Bottling Co. v. Evans*, 214 Ga. 1, 102 S.E.2d 547 (1958).

Unauthorized waiver of sovereign immunity. — The compensation of some other person or persons for comparable injuries on the same county property, or the purchase of insurance for such purposes, does not create a cause of action in a plaintiff suing a city in a tort action. The defendant city would not be estopped by such unauthorized waiver of the sovereign immunity of the county. *Revels v. Tift County*, 235 Ga. 333, 219 S.E.2d 445 (1975).

Right of officer to challenge unconstitutional law. — When a public officer can be held accountable for acting under an unconstitutional law, such officer should be able to challenge its constitutional validity, and should not be estopped to do so. *Richmond County v. Pierce*, 234 Ga. 274, 215 S.E.2d 665 (1975).

Taxing authorities not estopped by delay in denying tax exemption. — Failure of the Board of Tax Assessors to disallow claim for exemption until applicant had paid the amount of taxes otherwise due, did not relieve the applicant from paying taxes on the amount finally disallowed as an exemption, the exemption being claimed for the years 1941 and 1942 and approved by the tax receiver, but disallowed by the tax assessors in 1943; the taxing authorities were not estopped by such delay. *Harper v. Davis*, 197 Ga. 762, 30 S.E.2d 481 (1944).

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Powers limited to those defined by law. — Rule that the powers of public boards and officers are limited to those defined by law is of especial force where the action in question is a disbursement of public funds. 1971 Op. Att'y Gen. No. 71-9; 1979 Op. Att'y Gen. No. 79-73; 1991 Op. Att'y Gen. No. 92-1.

A Regional Development Center has only such powers as are conferred upon it by the legislature, either expressly or by necessary implication. 1991 Op. Att'y Gen. No. 92-1.

Especially concerning the expenditure of public funds. — An appropriate starting

point for any discussion of whether or not a public board or officer in Georgia is legally authorized to take a given action is the observation that the powers of public boards and officers are limited in this state to those defined by law, a rule which is of especial force where the questioned power relates to an expenditure of public funds; it has been said to justify such an expenditure there must be a provision of law clearly providing for or authorizing the same. 1977 Op. Att'y Gen. No. 77-46.

No absolution of superintendent by

school board. — Any purported absolution of a superintendent by a school board where a superintendent has expended public funds entrusted to the superintendent's care in a manner not authorized by law would almost certainly be held by the courts to be a nullity. 1971 Op. Att'y Gen. No. 71-12.

Legislative authority necessary to lease state property. — A state official should have some direct legislative authority before entering upon a long term lease of state property. 1945-47 Op. Att'y Gen. p. 11.

Absent legislative authority, the Commissioner of Agriculture may not lease right-of-way through a farmers market to a railroad. 1945-47 Op. Att'y Gen. p. 11.

Acquisition of land by county school board. — A county school board is not authorized to acquire land for the purpose of general construction and subsequent resale of the improved property. 1974 Op. Att'y Gen. No. 74-126.

Tax collector not estopped from collecting balance due. — Under O.C.G.A. § 45-6-5 a tax collector, by accepting a check in less than the amount of taxes due by the taxpayer, is not estopped from collecting the balance. 1945-47 Op. Att'y Gen. p. 552.

State not estopped by unauthorized action of public officer. — The Insurance Commissioner does not have the authority to accept payment of taxes for a five-year period and sign a binding agreement that this amount satisfies all claims by the state against the insurer. 1969 Op. Att'y Gen. No. 69-396.

Sales of sand removed from realty in ordinary course of business were subject to sales tax, and fact that agent of Revenue Department previously advised seller that such sales were not taxable did not estop commissioner from asserting rights of state to the tax due. 1962 Op. Att'y Gen. p. 545.

RESEARCH REFERENCES

ALR. — Validity of statute or ordinance vesting discretion in public officials without prescribing a rule of action, 12 ALR 1435; 54 ALR 1104; 92 ALR 400.

Malice as ground of attack on or relief from acts or regulations of public officers in exercise of discretionary powers, 57 ALR 208.

Custom or usage as enlarging statutory

powers of public officer or excusing performance of his duties in a manner other than that prescribed by statute, 65 ALR 811.

Applicability of doctrine of estoppel against government and its governmental agencies, 1 ALR2d 338.

Estoppel of state or local government in tax matters, 21 ALR4th 573.

45-6-6. Office property kept by officers subject to inspection by citizens.

All books, papers, and other office property kept by any public officer under the laws of this state shall be subject to the inspection of all the citizens of this state within office hours every day except Sundays and holidays. (Laws 1831, Cobb's 1851 Digest, p. 196; Code 1863, § 16; Code 1868, § 14; Code 1873, § 14; Code 1882, § 14; Civil Code 1895, § 14; Civil Code 1910, § 14; Code 1933, § 89-601.)

JUDICIAL DECISIONS

O.C.G.A. § 45-6-6 applicable to clerk of superior court. — O.C.G.A. § 45-6-6 does not specifically name the clerk of the superior court, but applies to the clerk as a public officer and the books in the clerk's office.

Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931).

Clerk may not deny right of inspection. — O.C.G.A. § 45-6-6 does not declare that the clerk shall have discretion to deny the right

of inspection, but it makes it mandatory that the clerk shall afford such right to all under the conditions prescribed by the law. *Baldwin v. Ariail*, 232 Ga. 376, 207 S.E.2d 17 (1974).

Private corporation's right of inspection. — O.C.G.A. § 45-6-6 does not exclude corporations operating for private gain from the benefits and protection of the recording Acts, but extends to "all the citizens of this State." *Atlanta Title & Trust Co. v. Tidwell*, 173 Ga. 499, 160 S.E. 620 (1931).

Unauthorized copying of official records prohibited. — An attorney at law has not, either in the attorney's own right, or in behalf of a corporation represented by the

attorney, the right, against the consent of the clerk of the superior court, and without paying the attorney's fees, to make copies of or abstracts from the books of record in the clerk's office for the purpose of compiling abstracts of titles to be used in a private abstract and land-title business carried on by such attorney or corporation. *Booth v. Mitchell*, 179 Ga. 522, 176 S.E. 396 (1934).

Records not included within section. — The records and files of the Motor Vehicle Department listing all of the automobile owners of the state do not constitute "books" within the meaning of O.C.G.A. § 45-6-6. *Grizzard v. State Revenue Comm'n*, 177 Ga. 845, 171 S.E. 765 (1933).

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Grand jury lists are public records which are open to inspection. — Under O.C.G.A. §§ 50-18-70 and 45-6-6, grand jury lists are public records and as such are matters which are open to inspection by citizens of this state at a reasonable time and place; any citizen, even a newspaper publisher, may copy same and also publish them in a newspaper, if the publisher so desires. 1967 Op. Att'y Gen. No. 67-371.

Records of actions are public records. — Actions on account, notes, mortgage foreclosures, and garnishments are "public records" within O.C.G.A. § 50-18-70 since they are required by law to be kept, as well as within O.C.G.A. § 45-6-6 since they are contained in books kept by a public officer under the laws of Georgia; therefore, as public records these matters should be open to inspection by citizens of this state at a reasonable time and place. 1967 Op. Att'y Gen. No. 67-340.

Licensing applications submitted to a state board are public records. — Licensure applications submitted to the State Board of Registration of Used Car Dealers and their necessary parts are public records and, therefore, applications and related material become state records open to public scrutiny when they are received by the board; finan-

cial statements submitted are a necessary part of this application and are, therefore, open for public inspection; and it would not be permissible for the board to return the financial statements to the applicant without subjecting them to public scrutiny. 1976 Op. Att'y Gen. No. 76-126.

Where the board's duties include keeping the applications and related materials. — The mere fact that a document is deposited or filed in a public office, or with a public officer, or is in the custody of a public officer, does not make it a public record; the crucial aspect which makes applications and related materials subject to public scrutiny is the necessity for a board to keep these documents in the discharge of their proper duty. 1976 Op. Att'y Gen. No. 76-126.

Daily records, diaries, summaries, and computation sheets are not subject to inspection or copying under the Open Records Statute (Art. 4, Ch. 18, T. 50); the Department of Transportation may deny requests to examine or copy such papers. 1973 Op. Att'y Gen. No. 73-55.

It is not proper for a county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 26.

C.J.S. — 76 C.J.S., Records, § 60 et seq., § 93 et seq.

ALR. — Restricting public access to judicial records of state courts, 84 ALR3d 598.

Payroll records of individual government employees as subject to disclosure to public, 100 ALR3d 699.

Warrantless search by government employer of employee's workplace locker, desk, or the like as violation of fourth amendment privacy rights — federal cases, 91 ALR Fed 226.

45-6-7. Duty of incumbent to deliver office property to successor — Generally.

When any office is vacated, it is the duty of the incumbent, when requested, to deliver all books, papers, and other office property to his qualified successor. (Orig. Code 1863, § 166; Code 1868, § 161; Code 1873, § 172; Code 1882, § 172; Civil Code 1895, § 269; Civil Code 1910, § 304; Code 1933, § 89-602.)

Cross references. — Provision in quo warranto judgment for delivery to proper

officer of all books and papers belonging to the public office in question, § 9-6-66.

JUDICIAL DECISIONS

Complete relief granted in equity. — Equity, having properly taken jurisdiction of the matter which was the gist of injunction proceeding (prevention of discharged deputy from further performing duties of former office) had the right to give complete relief as to the incidental matters of possession of official keys and papers, irrespective of whether or not as to such incidental

matters alone the petitioner would have had an adequate remedy at law by trover as to the keys, and by proceedings under O.C.G.A. § 45-6-7 as to the official papers. *Denson v. Tarver*, 186 Ga. 180, 197 S.E. 242 (1938).

Cited in *Altman v. Taylor*, 178 Ga. 689, 173 S.E. 828 (1934); *Daniel v. Citizens & S. Nat'l Bank*, 182 Ga. 384, 185 S.E. 696 (1936).

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, § 32.

ALR. — Duty of outgoing officer to see that person to whom money or other prop-

erty is turned over is a duly qualified successor, 106 ALR 195.

45-6-8. Duty of incumbent to deliver office property to successor — Duties of retiring judicial or ministerial officers or state's attorneys.

Upon retiring from office, all judicial officers, ministerial officers, or state's attorneys who receive any books, papers, or other office property from the state shall deliver those materials over to their successors. (Orig. Code 1863, § 170; Code 1868, § 165; Code 1873, § 176; Code 1882, § 176; Civil Code 1895, § 273; Civil Code 1910, § 308; Code 1933, § 89-606.)

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, § 32.

45-6-9. Duty of incumbent to deliver office property to successor — Person in possession to deliver office property when incumbent deceased or cannot be found.

If a vacancy occurs because of death or if the incumbent cannot be found at the time a demand is made, it shall be the duty of any person having possession or control of any books, papers, or other office property or any part thereof to deliver it to the successor; and any rights and remedies shall be the same against such person as against the officer who is deceased or cannot be found. (Orig. Code 1863, § 167; Code 1868, § 162; Code 1873, § 173; Code 1882, § 173; Civil Code 1895, § 270; Civil Code 1910, § 305; Code 1933, § 89-603.)

45-6-10. Duty of incumbent to deliver office property to successor — Hearing on show cause order; arrest of person who fails to comply; search for and seizure of office property.

At the time appointed or at any other time to which the matter may be adjourned after a copy of the show cause order had been personally served on the person refusing to deliver the books, papers, and other office property, the judge shall proceed to inquire into the circumstances. If it appears that the books, papers, and other office property are withheld, the judge must order the same delivered immediately to the successor and on failure of the person so ordered to comply, the judge shall issue a warrant, directed to any officer of the county or of the adjoining county authorized to make an arrest, to arrest such person and commit him to jail, where he shall remain until he complies with said order or is otherwise discharged by law. At the same time and in the same way the judge shall command such officer to search such places as may be designated in the warrant for the books, papers, and other office property and to seize and bring them before him or some other official authorized to preside. If it appears that the books, papers, and other office property belong to the office, the judge shall cause them to be delivered to the successor. The payment of costs is in the discretion of the court. These proceedings do not interfere with Code Section 45-6-14 on this subject. (Orig. Code 1863, § 169; Code 1868, § 164; Code 1873, § 175; Code 1882, § 175; Civil Code 1895, § 272; Civil Code 1910, § 307; Code 1933, § 89-605; Ga. L. 1984, p. 22, § 45.)

JUDICIAL DECISIONS

Order by superior court not reviewable.

— The proceeding authorized by O.C.G.A. § 45-6-10 for the purpose of compelling the delivery of books, papers, or other property, is not, when instituted before a judge of the superior court, a proceeding in any superior

court; and consequently no order passed by such officer upon such a proceeding is reviewable by a writ of error to the Supreme Court. *Grimsley v. Morgan*, 47 Ga. App. 183, 170 S.E. 91 (1933); *Chandler v. Barefield*, 178 Ga. 265, 172 S.E. 919 (1934).

45-6-11. Duty of incumbent to deliver office property to successor — Proceedings by successor against person refusing to deliver office property.

If any person shall neglect or refuse to deliver books, papers, or other office property after demand has been made, the successor shall make complaint to the judge of the probate court of the county or to the judge of the superior court of the circuit in which the person refusing resides or, if neither can be had, to the judge of the superior court of an adjoining circuit; and if such officer is satisfied from the oath of complainant or otherwise that books, papers, or other office property are being withheld, he shall grant an order requiring the person so refusing to show cause, on a day and at a place named in such order, why he should not be compelled to deliver over such property. (Ga. L. 1853-54, p. 27, § 1; Code 1863, § 168; Code 1868, § 163; Code 1873, § 174; Code 1882, § 174; Civil Code 1895, § 271; Civil Code 1910, § 306; Code 1933, § 89-604.)

JUDICIAL DECISIONS

Cited in *Daniel v. Citizens & S. Nat'l Bank*, 182 Ga. 384, 185 S.E. 696 (1936); *Patten v. Miller*, 190 Ga. 105, 8 S.E.2d 776 (1940).

45-6-12. Duty of incumbent to deliver office property to successor — Director of Division of Archives and History to act as agent when office abolished or no successor appointed.

The director of the Division of Archives and History, or his or her designee, is authorized to act as agent for any public officer or his or her successor in office, or in those cases where the office is abolished or no successor is appointed or elected, to recover books, papers, and other office property in the manner provided in Code Sections 45-6-10 and 45-6-11. The director may initiate such action on his or her own volition and succeeds to all rights and remedies as the successor in office would normally have in the property. (Code 1933, § 89-605.1, enacted by Ga. L. 1977, p. 567, § 1; Ga. L. 2002, p. 532, § 8.)

The 2002 amendment, effective July 1, 2002, substituted "Division of Archives and History," for "Department of Archives and History," in the first sentence and inserted "or her" in three places.

45-6-13. Duty of incumbent to deliver office property to successor — Retiring officers liable for costs of office property upon failure to deliver.

Upon failure to deliver any books, papers, or other office property after demand has been made by the incoming officer, the retiring judicial or ministerial officer shall be liable for three times the initial cost of such

books, papers, or other office property, to be retained out of his salary, if a salaried officer, or if not a salaried officer and the said amount has not been retained, he shall be subject to action and recovery by his successor in the name of the state. (Orig. Code 1863, § 171; Code 1868, § 166; Code 1873, § 177; Code 1882, § 177; Civil Code 1895, § 274; Civil Code 1910, § 309; Code 1933, § 89-607.)

JUDICIAL DECISIONS

Cited in *Patten v. Miller*, 190 Ga. 105, 8 S.E.2d 776 (1940).

45-6-14. Duty of incumbent to deliver office property to successor — Failure of officer to deliver office property.

After the expiration of his term, if any officer shall willfully and unlawfully withhold or detain from his successor the books, papers, or other office property belonging to his office or if he shall mutilate, destroy, take away, or otherwise prevent the complete possession by his successor of such books, papers, or other office property, then he shall be guilty of a misdemeanor. (Laws 1833, Cobb's 1851 Digest, pp. 805, 806; Code 1863, § 4368; Code 1868, § 4406; Code 1873, § 4474; Code 1882, § 4474; Penal Code 1895, § 283; Penal Code 1910, § 287; Code 1933, § 89-9905.)

RESEARCH REFERENCES

C.J.S. — 76 C.J.S., Records, § 32.

CHAPTER 7

SALARIES AND FEES

Article 1

General Provisions

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45-7-1. Payment for personal services by state departments.
- 45-7-2. Compensation of state official for serving in ex officio position.
- 45-7-3. Compensation of state officials designated in Code Sections 45-7-4, 45-7-20, and 45-7-21; reimbursement of members of General Assembly serving on advisory boards and similar entities of the executive and judicial branches.
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- 45-7-6. Members of boards and other public entities not to be paid for more than one meeting per day.
- 45-7-7. Compensation and allowances of certain officials not to be changed without giving public notice.
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Reimbursement of Expenses

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- 45-7-21. Expense allowance and travel cost reimbursement for members of certain boards and commissions.
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- 45-7-26. Advance travel funds — Promulgation of rules and regulations for accounting of funds.
- 45-7-27. Advance travel funds — Employee to file accounting of funds granted; employee to reimburse unused funds.
- 45-7-28. Advance travel funds — Creation of lien against money due employee where employee fails to file accounting or reimburse funds.
- 45-7-28.1. Employee travel reimbursement; rules and regulations to be issued by the Department of Audits and Accounts and the Office of Planning and Budget.
- 45-7-29. Reimbursement for expenses of lodging and air fare — Supporting documentation required.
- 45-7-30. Reimbursement for expenses of lodging and air fare — Reimbursement of first-class air fare.
- 45-7-31. Reimbursement for expenses of lodging and air fare — Per diem allowances.
- 45-7-32. Reimbursement for expenses of lodging and air fare — Penalty for violations.
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- 45-7-34. Rules and regulations for administering reimbursement programs.

Article 3

Salary Deductions

- 45-7-50. Deductions for United States savings bonds.
- 45-7-51. Deductions for payment of insurance premiums.
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PUBLIC OFFICERS AND EMPLOYEES

Sec.

- 45-7-53. Deductions for payment of parking and van pool fees.
- 45-7-54. Voluntary contributions by state government employees through payroll deductions to certain not for profit organizations.
- 45-7-55. Deductions for transit passes and other fare media.
- 45-7-56. Deductions for purchase of personal computing and computer related equipment.

Article 4

Disclosure of Professional Services Fees

- 45-7-70. Purpose of article.
- 45-7-71. Professional services fees to be identified in financial records.
- 45-7-72. Provision of copy of statement or report to Attorney General and state auditor.
- 45-7-73. State auditor to prescribe form and date for submission of reports.
- 45-7-74. State auditor to provide report of fees to various state officials.

Article 5

State Commission on Compensation

Sec.

- 45-7-90. Established; purpose.
- 45-7-91. Composition; qualifications, appointment, vacancies of members.
- 45-7-92. Oath, salary, expenses of members; meetings generally.
- 45-7-93. Organizational meeting; employment of staff.
- 45-7-94. Commission to make comparative study of compensation.
- 45-7-95. Commission to file written report of recommended compensation; bill to be introduced into General Assembly; procedure for adoption of bill.
- 45-7-96. Construction of article.

Article 6

Temporary Furloughs

- 45-7-110. Criteria for order; notice; applicability; effect of other laws; effect on retirement or pension system; repealer [Repealed].

Cross references. — Authority of General Assembly to prescribe compensation and allowances for executive officers, Ga. Const. 1983, Art. V, Sec. III, Para. III.

ARTICLE 1

GENERAL PROVISIONS

OPINIONS OF THE ATTORNEY GENERAL

Waiver of compensation. — An elected public official cannot waive the compensation of that office established by law. 1985 Op. Att'y Gen. No. 85-13.

RESEARCH REFERENCES

ALR. — Constitutional provision against increasing compensation during term of office as applicable where new duties are imposed on officer after taking office, 51 ALR 1522; 170 ALR 1438.

Validity and effect of agreement by public officer or employee to accept less than compensation or fees fixed by law, or of acceptance of reduced amount, 118 ALR 1458; 160 ALR 490.

Constitutional or statutory limitation of compensation of public officer as applicable to one in governmental service who is paid in whole or part from funds not derived from taxation, 135 ALR 1033.

Constitutional provision against increase in compensation of public officer during term of office as applicable to statute providing for first time for compensation for office, 144 ALR 685.

Constitutional or statutory inhibition of change of compensation of public officer as applicable to one appointed or elected to fill vacancy, 166 ALR 842.

Payment of salary to de facto officer or employee as defense to action or proceeding

by de jure officer or employee for salary, 64 ALR2d 1375.

Payroll records of individual government employees as subject to disclosure to public, 100 ALR3d 699.

45-7-1. Payment for personal services by state departments.

The director of the Office of Planning and Budget is authorized, in his discretion, to require any department of state government to calculate and to make payment for personal services on the basis of 26 pay periods per year. (Ga. L. 1967, p. 125, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 275.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 238.

45-7-2. Compensation of state official for serving in ex officio position.

No state official who receives, as a part of his compensation, pay for service on an ex officio office or position held by such officer shall receive any compensation for such service in any such ex officio office created subsequent to May 1, 1963, unless the statute creating the ex officio office shall specifically provide for compensation for the ex officio officer. (Ga. L. 1963, p. 586, § 1.)

RESEARCH REFERENCES

ALR. — Compensation of public officers or employees for services rendered under an unconstitutional act, 101 ALR 1417.

Validity and effect of agreement by public

officer or employee to accept less than compensation of fees fixed by law, or of acceptance of reduced amount, 160 ALR 490.

45-7-3. Compensation of state officials designated in Code Sections 45-7-4, 45-7-20, and 45-7-21; reimbursement of members of General Assembly serving on advisory boards and similar entities of the executive and judicial branches.

(a) Unless specifically stated otherwise, the state officials designated in Code Sections 45-7-4, 45-7-20, and 45-7-21 shall not receive from state funds any compensation, salary, contingent expense allowance, longevity pay, or allowance of any kind other than that specified or provided for in such Code sections. The annual salary for each such official shall be paid in equal monthly or semimonthly installments.

(b) Members of the General Assembly may be reimbursed from funds of the executive and judicial branches of state government for their service

upon advisory or investigative boards, committees, commissions, and other similar entities of the executive and judicial branches, subject to the following conditions:

(1) Such reimbursement shall be limited to actual expenses incurred or to actual travel expenses incurred and a per diem allowance not to exceed the per diem allowance paid to members of the General Assembly for service on interim committees of the General Assembly, provided that a mileage allowance for use of a personal motor vehicle may be substituted for actual expenses incurred in the use of the vehicle; and

(2) No such reimbursement shall be paid to any member of the General Assembly for any day upon which the member of the General Assembly receives compensation or reimbursement from the legislative branch of state government.

Members of the General Assembly are expressly authorized to receive reimbursement as provided for in this subsection, and the executive and judicial branches of state government are expressly authorized to pay reimbursement as provided for in this subsection. (Ga. L. 1973, p. 701, § 1; Ga. L. 1978, p. 4, § 1; Ga. L. 1988, p. 284, § 1.)

Cross references. — Acceptance of other compensated office or appointment by member of General Assembly, Ga. Const. 1983, Art. III, Sec. II, Para. IV.

JUDICIAL DECISIONS

Purpose of O.C.G.A. §§ 45-7-21 and 45-7-3 is to set limitations on current earnings and expenses of those in high governmental office and not to penalize those who assume such office by requiring forfeiture of previously accrued payment obligation of the state. *State v. O'Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980).

Applicability to officer already in office. — During officer's tenure as Commissioner of

Department of Administrative Services, appellee was subject to limitations regarding compensation contained in O.C.G.A. §§ 45-7-3 and 45-7-21, notwithstanding that appellee assumed office several months prior to enactment of legislation governing compensation. *State v. O'Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980).

OPINIONS OF THE ATTORNEY GENERAL

A public official subject to the Compensation Act, cannot be paid for accumulated annual leave. 1979 Op. Att'y Gen. No. 79-34.

Estate cannot be paid for annual leave. — The estate of a constitutional officer whose salary is set by the Compensation Act, cannot be paid for any amount of the officer's accrued leave. 1979 Op. Att'y Gen. No. 79-34.

Compensatory time restrictions. — Com-

pensatory time cannot be earned, credited or granted to State constitutional officers and officials whose compensation is set by the State Compensation Act, 1985 Op. Att'y Gen. No. 85-6.

For disposition of accrued leave when commissioner of natural resources resigned to become commissioner of labor, see 1985 Op. Att'y Gen. No. 85-59.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 271 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 218.

ALR. — Validity of agreement by public officer or employee to accept less than compensation or fees fixed by law, 70 ALR 972; 118 ALR 1458; 160 ALR 490.

Right of public officers or employees to preference or priority in payment of their salaries or fees and expenses, 92 ALR 635.

Validity of contract by officer with public for rendition of new or special services to be paid for in addition to regular compensation, 159 ALR 606.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements, 5 ALR2d 1182.

45-7-4. Annual salaries of certain state officials; cost-of-living adjustments.

(a) The annual salary of each of the state officials listed below shall be as follows:

(1) Governor \$ 60,000.00

An allowance in an amount specified in the appropriations Act shall also be provided for the operation of the Governor's mansion.

(2) Lieutenant Governor 54,920.00

(3) Adjutant general

The adjutant general shall continue to receive the pay and allowances under the same procedure as provided by law.

(4) Commissioner of Agriculture 100,429.00

(5) Attorney General 114,633.00

(6) Reserved.

(7) Commissioner of Insurance 100,396.00

(8) Reserved.

(9) Commissioner of Labor 100,418.00

The above amount of salary for the Commissioner of Labor shall include any compensation received from the United States government and the amount of state funds paid shall be reduced by the amount of compensation received from the United States government.

(10) Reserved.

(11) Each member of the Public Service Commission 96,655.00

- (12) Reserved.
- (13) State School Superintendent 102,708.00
- (14) Secretary of State 102,708.00
- (15) Reserved.
- (16) Reserved.
- (17) Reserved.
- (18) Each Justice of the Supreme Court 139,418.00
- (19) Each Judge of the Court of Appeals 138,556.00
- (20) Each superior court judge 99,862.00

Each superior court judge shall also receive any supplement paid to such judge by the county or counties of such judge's judicial circuit as may be provided for by law. Each superior court judge shall also receive reimbursement of travel expenses as provided by law.

- (21) Each district attorney 88,635.00

Each district attorney shall also receive any supplement paid to such district attorney by the county or counties of such district attorney's judicial circuit as may be provided for by law. Each district attorney shall also receive reimbursement of travel expenses as provided by law.

- (22) Each member of the General Assembly 16,200.00

(A) Reserved.

(B) Each member of the General Assembly shall also receive the allowances provided by law. The amount of the daily expense allowance which each member is entitled to receive under the provisions of Code Section 28-1-8 shall be as provided in that Code section. The mileage allowance for the use of a personal car on official business shall be the same as that received by other state officials and employees.

(C) In addition to any other compensation and allowances authorized for members of the General Assembly, each member may be reimbursed for per diem differential and for actual expenses

incurred in the performance of duties within the state as a member of the General Assembly in an amount not to exceed \$7,000.00 per year. Expenses reimbursable up to such amount shall be limited to one or more of the following purposes: lodging, meals, per diem differential, postage, personal services, printing and publications, rents, supplies (including software), telecommunications, transportation, utilities, and purchasing or leasing of equipment. If equipment purchased by a member has a depreciated value of \$100.00 or less when such member leaves office, the equipment does not need to be returned to the state. No reimbursement shall be made for any postage which is used for a political newsletter. No reimbursement shall be paid for lodging or meals for any day for which a member receives the daily expense allowance as provided in this paragraph. Such expenses shall be reimbursed upon the submission of sworn vouchers to the legislative fiscal office. Such sworn vouchers shall be accompanied by a supporting document or documents showing payment for each expense claimed or an explanation of the absence of such documentation. No sworn voucher or supporting document shall be required for per diem differential.

- (D) The amount of per diem differential which may be claimed for each day under subparagraph (C) of this paragraph shall be the difference between the daily expense allowance authorized for members of the General Assembly and \$119.00; provided, however, that the general appropriations Act for any fiscal year may increase such amount of \$119.00 per day to an amount not in excess of the federal per diem rate then in effect for the state capital as specified by the General Services Administration. Per diem differential shall be paid by the legislative fiscal office to the member upon the member's notification to the legislative fiscal office of the days for which the daily expense allowance was received for which the member wishes to claim the per diem differential, and the legislative fiscal office shall keep a record of the days for which per diem differential is so claimed and paid.

(E) For the purposes of this paragraph, a year shall begin on the convening date of the General Assembly in regular session each year and end on the day prior to the convening of the General Assembly in the next calendar year. Any voucher or claim for any reimbursement for any year as defined in this paragraph shall be submitted no later than the fifteenth of April immediately following the end of such year. No reimbursement shall be made on any voucher or claim submitted after that date. Any amounts remaining in such expense account at the end of the first year of the two year biennium may be claimed for expenses incurred during the second year of the two year biennium. Any amounts remaining in any expense account which are not so claimed by April 15 of the year following the second year of the biennium and any amounts claimed which are returned as hereafter provided for in this paragraph shall lapse and shall be remitted by the legislative fiscal office to the general fund of the state treasury. Any former member of the General Assembly may be reimbursed for expenses incurred while a member of the General Assembly upon compliance with the provisions of this paragraph. The Legislative Services Committee is empowered to provide such procedures as it deems advisable to administer the provisions of this paragraph, including, but not limited to, definitions of the above list of items for which reimbursement may be made and the form of the voucher or claim which must be submitted to the legislative fiscal office. In the event of any disagreement as to whether any reimbursement shall be made or any allowance shall be paid, the Legislative Services Committee shall make the final determination. In the event any reimbursement is made or any allowance is paid and it is later determined that such reimbursement or payment was made in error, the person to whom such reimbursement or payment was made shall remit to the legislative fiscal office the amount of money involved. In the event any such person refuses to make such remittance, the legislative fiscal office is authorized to withhold the payment of any other moneys to which such person is

entitled until the amount of such reimbursement or payment which was made in error shall be realized.

- (23) Speaker of the House of Representatives 17,800.00

The Speaker of the House of Representatives shall also receive the salary and allowances authorized as a member of the General Assembly. Upon the taking of office by the members of the General Assembly on the convening day of the regular session of the General Assembly in 1983, the annual salary of the Speaker of the House of Representatives shall become \$22,800.00. After such date, the Speaker shall also receive as additional salary a sum equal to the amount of salary over \$30,000.00 per annum which is received by the Lieutenant Governor as of that date or thereafter; and the salary of the Speaker shall be adjusted at the beginning of each term so as to include such additional sum.

- (24) President Pro Tempore of the Senate 4,800.00

The President Pro Tempore of the Senate shall also receive the salary and allowances authorized as a member of the General Assembly.

- (25) Speaker Pro Tempore of the House of Representatives 4,800.00

The Speaker Pro Tempore of the House of Representatives shall also receive the salary and allowances authorized as a member of the General Assembly.

(b) As a cost-of-living adjustment except as qualified below as to members and member-officers of the General Assembly, the annual salary of each state official whose salary is established by Code Section 45-7-3, this Code section, and Code Sections 45-7-20 and 45-7-21, including members of the General Assembly, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Speaker Pro Tempore of the House of Representatives, may be increased by the General Assembly in the General Appropriations Act by a percentage not to exceed the average percentage of the general increase in salary as may from time to time be granted to employees of the executive, judicial, and legislative branches of government. However, any increase for such officials shall not include within-grade step increases for which classified employees of the state merit system are eligible. Any increase granted pursuant to this subsection shall

become effective at the same time that funds are made available for the increase for such employees, except increases for members and member-officers of the General Assembly. That portion of the increase determined by the Legislative Services Committee to reflect a cost-of-living increase based upon objective economic criteria shall become effective for members and member-officers at the same time that funds are made available for the increase for such employees. The balance of the increase for members and member-officers of the General Assembly shall become effective on the convening of the next General Assembly in January of the next odd-numbered year. The Office of Planning and Budget shall calculate the average percentage increase.

(c) The annual salary being received on June 30, 1980, shall be increased by 8 percent for each state official listed in subsection (a) of this Code section who:

(1) Is not a member of the General Assembly; and

(2) Is not a contributing member of a state retirement system and, therefore, does not benefit by or participate in any program whereunder a portion of the employee contributions to the state retirement system are made on behalf of the employee by the employer. (Ga. L. 1973, p. 701, § 2; Ga. L. 1978, p. 4, § 2; Ga. L. 1978, p. 902, § 1; Ga. L. 1980, p. 756, § 1; Ga. L. 1980, p. 758, § 1; Ga. L. 1980, p. 925, § 19; Ga. L. 1981, p. 894, § 1; Ga. L. 1982, p. 1255, § 1; Ga. L. 1983, p. 3, § 34; Ga. L. 1983, p. 719, § 1; Ga. L. 1983, p. 1401, § 20; Ga. L. 1983, p. 1831, §§ 1-3; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 444, § 1; Ga. L. 1984, p. 717, § 1; Ga. L. 1984, p. 808, §§ 1, 2; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 493, § 1; Ga. L. 1985, p. 524, § 1; Ga. L. 1985, p. 672, §§ 1, 2; Ga. L. 1986, p. 877, § 1; Ga. L. 1988, p. 154, § 1; Ga. L. 1988, p. 284, § 2; Ga. L. 1989, p. 212, § 1; Ga. L. 1989, p. 579, § 5; Ga. L. 1991, p. 1363, § 1; Ga. L. 1992, p. 6, § 45; Ga. L. 1994, p. 851, §§ 1, 2; Ga. L. 1994, p. 1065, § 1; Ga. L. 1995, p. 10, § 45; Ga. L. 1995, p. 1018, §§ 1, 2; Ga. L. 1996, p. 1302, § 2; Ga. L. 1999, p. 910, § 4; Ga. L. 1999, p. 1213, §§ 5, 6, 7; Ga. L. 1999, p. 1242, §§ 2, 2.1; Ga. L. 2001, p. 783, § 1; Ga. L. 2002, p. 415, § 45.)

The 2001 amendment, effective April 26, 2001, substituted "Reserved" for "State Auditor 99,608.00" in paragraph (a)(6).

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "utilities, and purchasing" for "utilities, purchasing" in subparagraph (a)(22)(C).

Cross references. — Reimbursement of superior court judges for travel and other expenses, §§ 15-6-30 through 15-6-32. Additional compensation of district attorneys, and as to reimbursement of district attorneys and assistant district attorneys for travel ex-

penses, §§ 15-18-10 through 15-18-12. Further provisions regarding salary and allowances of members of General Assembly, Speaker of House of Representatives, etc., § 28-1-8. Requirements regarding introduction of bills changing compensation for state officials or department or agency heads, § 28-5-1 et seq. Reimbursement of expenses of state officials generally, § 45-7-20 et seq. Recommendations of amount of compensation to be established by law for constitutional state officers, § 45-7-90 et seq. Legal mileage allowance, § 50-19-7.

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 1985, "government" was substituted for "Government" in two places in paragraph (9) of subsection (a).

Pursuant to Code Section 28-9-5, in 1991, the comma was deleted following "General Assembly" near the middle of subsection (b).

Pursuant to Code Section 28-9-5, in 1992, "Code Section 45-7-3, this Code section, and Code Sections 45-7-20 and 45-7-21" was substituted for "Code Sections 45-7-3, this Code section, 45-7-20, and 45-7-21" in subsection (b).

Editor's notes. — Ga. L. 1983, p. 1401, § 1, not codified by the General Assembly, provided that: "It is the intent of this Act to implement certain changes required by Article IV, Section V, Paragraph I, subparagraph (b) of the Constitution of the State of Georgia."

Ga. L. 1988, p. 284, § 3, not codified by the General Assembly, provided that the 1988 amendment would become effective on the convening date of the 1989 regular session of the General Assembly. The session convened on January 9, 1989.

Ga. L. 1989, p. 212, § 2, not codified by the General Assembly, provides that for purposes only of the general appropriations Act for the year beginning July 1, 1989, the cost-of-living adjustment provisions of subsection (b) of Code Section 45-7-4 shall not apply with respect to Justices of the Supreme Court and Judges of the Court of Appeals.

Ga. L. 1991, p. 1363, § 2, not codified by the General Assembly, provides that the 1991 amendment shall apply with respect to claims for expense reimbursements submitted on or after April 16, 1991.

Ga. L. 1996, p. 6, § 45, not codified by the

General Assembly, provides: "(1) Notwithstanding the reenactment of the Official Code of Georgia Annotated by Section 54 of this Act, the increase in the amount of daily expense allowances for each member of the General Assembly which is contained in the third undesignated paragraph [now subparagraph (B)] of paragraph (22) of subsection (a) of Code Section 45-7-4, relating to annual salaries of certain state officials, shall not become effective until the date specified in the 1995 Act amending such language. Until such time, such undesignated paragraph shall read as it formerly existed."

Ga. L. 1996, p. 1302, § 3, not codified by the General Assembly, provides, in part, that the amount of daily expense allowance shall remain \$59.00 until the convening date of the 1997 regular session of the General Assembly and that on and after such date the allowance shall be \$75.00.

Ga. L. 1999, p. 1213, § 10, not codified by the General Assembly, provides that: "If the appropriations Act of the fiscal year beginning July 1, 1999, and ending June 30, 2000, provides a percentage increase in salary for the officials affected by this Act, as authorized in subsection (b) of Code Section 45-7-4, such percentage increase shall be cumulative and in addition to the increases provided under Section 5 (paragraphs (4) through 21 of subsection (a) of Code Section 45-7-4) of this Act."

Ga. L. 1999, p. 910, § 4, also amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1999, p. 1213, § 5.

Law reviews. — For article discussing judicial compensation, see 14 Ga. St. B.J. 110 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Taxation of expense allowances. — Amounts paid to state officials for expenses are part of such official's gross income and are taxable to the extent that they are not used for such official business purposes. 1969 Op. Att'y Gen. No. 69-190.

Certain salary increases considered cost-of-living increases. — Salary increases appropriated under general salary increase section of appropriations Act are considered cost-of-living increases. In other words, salary increases granted to state employees

under state merit system effective July 1, 1980, are considered cost-of-living increases. 1980 Op. Att'y Gen. No. 80-129.

Effect of "general" salary increases for employees. — The appropriation for the 1993-94 fiscal year authorizing pay raises for employees and state officers, but excluding members of the General Assembly, is consistent with state law and the Lieutenant Governor is entitled to receive a cost-of-living adjustment (COLA). 1993 Op. Att'y Gen. No. U93-13.

Intent of O.C.G.A. § 45-7-4(c) was to increase take-home income of certain state employees and officials by requiring employer to pay a large portion of contribution previously paid by member to state retirement programs. 1980 Op. Att'y Gen. No. 80-129.

Effect of O.C.G.A. § 45-7-4(c) on salary of district attorney. — O.C.G.A. § 45-7-4(c) was intended to increase salary of a district attorney, whose salary is set by O.C.G.A. § 45-7-4 by eight percent if that district attorney did not receive advantage of employer pick-up of contributions to district attorney's retirement system. 1980 Op. Att'y Gen. No. 80-129.

Eight percent salary increase calculated on basis of pre-July 1, 1980, salary. — Eight percent salary increase received by members of Employees' Retirement System who attain 34 years of creditable service and elect to discontinue employee contributions during fiscal year 1981 should be calculated on salary received by such members as of June 30, 1980, prior to 1.75 percent salary increase granted on July 1, 1980. 1980 Op. Att'y Gen. No. 80-139.

Calculation of commissioner of revenue's salary on July 1, 1983. — With respect to the present commissioner of revenue, the proper calculation of the commissioner's salary on July 1, 1983 would be as follows: (1) statutory salary as of July 1, 1983 is \$49,900 pursuant to O.C.G.A. § 45-7-5(a)(12); (2) to this amount should be added eight percent of salary as of June 30, 1980 pursuant to the provisions of O.C.G.A. § 45-7-5(c); and (3) the four percent cost-of-living increase provided by the "General Appropriations Act", Ga. L. 1983, p. 1603, should then be calculated on and added to this base to reach the correct total salary which became effective on July 1, 1983. 1983 Op. Att'y Gen. No. U83-45.

Lieutenant Governor's salary. — The Lieutenant Governor, as an officer whose salary is set by O.C.G.A. § 45-7-5, must be given the percentage increase or \$1000 maximum. The salary of the Speaker, however, must be adjusted at the beginning of the next term to include the increase given the Lieutenant Governor. 1992 Op. Att'y Gen. No. U92-19.

Percentage increases for members of General Assembly. — The members of the General Assembly must be given one-half the percentage increase given employees of the executive, judicial and legislative branches when the employees receive it. 1992 Op. Att'y Gen. No. U92-19.

Increase in salary supplement for superior court judges. — A county commission may increase the annual salary supplement for superior court judges beyond the minimum provided for by local legislation. 1996 Op. Att'y Gen. No. U96-2.

Reimbursed items are property of the State. — Items purchased by legislators for the performance of duties as a member of the General Assembly, for which legislators are reimbursed pursuant to O.C.G.A. § 45-7-5(a)(22), are property of the State and may not be retained by legislators as personal property. 1992 Op. Att'y Gen. No. 92-33.

Unauthorized disposal of reimbursement items. — The Legislative Services Committee does not have the authority to dispose of the items purchased pursuant to the reimbursement provisions of O.C.G.A. § 45-7-5(a)(22), since the General Assembly has specifically empowered the Department of Administrative Services to dispose of state surplus property under O.C.G.A. §§ 50-5-140 — 50-5-146. 1994 Op. Att'y Gen. No. U94-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 278.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 224.

ALR. — Validity of waiver of, or agreement to waive, disability benefit, annuity, pension, or bonus incident to public office or employment, 125 ALR 728.

Validity and effect of agreement by public officer or employee to accept less than compensation of fees fixed by law, or of acceptance of reduced amount, 160 ALR 490.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements, 5 ALR2d 1182.

45-7-5. Compensation of Lieutenant Governor.

The Lieutenant Governor shall be compensated in the amount and manner provided in Code Sections 45-7-3 and 45-7-4. He shall also be entitled to reimbursement for actual transportation costs while traveling by public carrier and the legal mileage rate for the use of a personal automobile while on official business, together with the actual cost of meals and lodging while on official state business, as provided in Code Section 45-7-20. (Ga. L. 1967, p. 106, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 3. 63C Am. Jur. 2d, Public Officers and Employees, § 278. **C.J.S.** — 67 C.J.S., Officers, §§ 219, 223, 226. 81A C.J.S., States, §§ 104, 106, 107.

45-7-6. Members of boards and other public entities not to be paid for more than one meeting per day.

No member of a public agency, board, bureau, commission, authority, or body who is paid on a per meeting basis shall be paid for more than one meeting in any one calendar day. (Ga. L. 1976, p. 166, § 1.)

RESEARCH REFERENCES

ALR. — Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements, 5 ALR2d 1182.

45-7-7. Compensation and allowances of certain officials not to be changed without giving public notice.

(a) The compensation or allowances of the officials listed in subsection (b) of this Code section shall not be changed by the governing board or body having the authority to do so unless public notice of such proposed action and amount shall have been given at least 30 days prior to the date such board or body shall consider such action and unless notice of such proposed change shall have likewise been given to the Governor by the board or body at least 30 days prior to the date of such proposed change.

(b) Subsection (a) of this Code section shall apply to the compensation and allowances of the commissioner of community affairs, the director of the Employees' Retirement System of Georgia, the director of the State Forestry Commission, the director of investigation of the Georgia Bureau of Investigation, the executive director of the Georgia Franchise Practices Commission, the commissioner of human resources, the commissioner of industry, trade, and tourism, the commissioner of natural resources, the commissioner of public safety, the chancellor of the University System of Georgia, the president or executive director of the Georgia Student Finance

Commission, the executive director of the State Soil and Water Conservation Commission, the executive secretary-treasurer of the Teachers Retirement System of Georgia, the commissioner of transportation, and the executive director of the State Ethics Commission. (Ga. L. 1979, p. 392, §§ 1, 2; Ga. L. 1988, p. 269, § 28; Ga. L. 1989, p. 1641, § 10; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, inserted "State" preceding "Soil" in subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, an apostrophe was deleted following "Teachers" and "State Ethics Commission" was substituted for

"State Campaign and Financial Disclosure Commission" in subsection (b).

Editor's notes. — Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides that: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

OPINIONS OF THE ATTORNEY GENERAL

Requirements of notice given to public and to Governor. — O.C.G.A. § 45-7-7 requires that, prior to a change in the compensation or allowances of any of the designated officials, notice must be given to the public and to the Governor. These notices must: (1) be given by the board or body having the authority to effect the compensation change; (2) advise of the proposed action (compensation change) and the amount; and (3) be given at least 30 days prior to the date on which the board or body shall consider the proposed change. 1979 Op. Att'y Gen. No. 79-31.

Sufficient compliance with notice requirements. — Given the public nature of the board of trustees, and its meetings and records, the board will sufficiently comply with the public notice requirement of O.C.G.A. § 45-7-7 if a public announcement

is made at a public meeting of the board, which would then be entered in the public minutes of the board. 1979 Op. Att'y Gen. No. 79-31.

Implied requirement in notice to Governor. — The portion of O.C.G.A. § 45-7-7 requiring notice to the Governor does not use the words "and amount" which are found in the language requiring notice to the public. However, a reasonable interpretation of the intent of Ga. L. 1979, p. 392 would hold that the Governor should also be advised of the amount of the proposed change. 1979 Op. Att'y Gen. No. 79-31.

Terminal annual leave. — Where commissioner of natural resources resigned to become commissioner of labor, the commissioner was entitled to collect terminal annual leave from the department of natural resources. 1985 Op. Att'y Gen. No. 85-59.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employes, § 291 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employes, §§ 229-234.

45-7-8. Officer to be dismissed from office for charging or taking fees not allowed or for services not performed.

Any public officer who shall charge or take fees not allowed by law or for service not performed shall, on conviction or proof thereof, be dismissed from office. (Laws 1792, Cobb's 1851 Digest, p. 357; Code 1863, § 3634; Code 1868, § 3659; Code 1873, § 3710; Code 1882, § 3710; Penal Code 1895, § 1098; Penal Code 1910, § 1125; Code 1933, § 89-702.)

Cross references. — Acceptance of other member of General Assembly, Ga. Const. compensated office or appointment by 1983, Art. III, Sec. II, Para. IV.

JUDICIAL DECISIONS

Section indicative of public policy. — Where proceedings were not brought under O.C.G.A. § 45-7-8 but were instituted under O.C.G.A. § 15-6-82, relating to removal of clerks for cause, O.C.G.A. § 45-7-8 was at least indicative of the policy of this state that public officers shall not charge or take fees not allowed by law. *Adamson v. Leathers*, 60 Ga. App. 382, 3 S.E.2d 871 (1939).

Wrongful acts constituting malpractice in office. — Any county commissioner who knowingly and willfully assists another public officer in charging and receiving unlawful fees is guilty of malpractice in office and of violating the provisions of O.C.G.A. § 45-11-4. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942).

OPINIONS OF THE ATTORNEY GENERAL

Arrest fees for sheriff. — A sheriff is not entitled to an arresting fee for an arrest made by the county police, when the sheriff does not participate in the arrest, but sheriffs are entitled to an arresting fee when they arrest in an arrest made by the Georgia State Patrol. 1945-47 Op. Att’y Gen. p. 96.

And for game warden. — Where a game warden arrests a violator of the game and fish laws, the arrest fees go into the general funds of court. 1948-49 Op. Att’y Gen. p. 231.

Voluntary contributions to board’s expenses not to be encouraged. — Neither the State Board of Examiners in Optometry (now the State Board of Optometry), nor any member thereof should encourage voluntary contributions to assist in meeting the expenses incurred in the administration of the affairs of the board. 1945-47 Op. Att’y Gen. p. 504.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 121, 122.

ALR. — Liability of public officer or his bond to public body in respect of fees or charges which he illegally or improperly

collected from members of public, 99 ALR 647.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-7-9. Compensation for line-of-duty injuries of full-time state employees; exceptions.

(a) As used in this Code section, the term:

(1) “Agency” means every state department, agency, board, bureau, commission, and authority, except the Department of Transportation.

(2) “Full-time” means an employee who regularly works 30 hours or more each week.

(3) “Injured in the line of duty” means an injury which arises out of or in the course of employment. Going to or from work shall not be considered in the line of duty.

(4) “State employee” means a full-time employee of an agency.

(b) Any state employee who becomes physically disabled as a result of a physical injury incurred in the line of duty and caused by a willful act of violence committed by a person other than a fellow employee shall be entitled to receive compensation as provided in this Code section.

(c) Any person injured in the line of duty as provided in subsection (b) of this Code section shall continue to receive his regular compensation for the period of time that the employee or officer is physically unable to perform the duties of his employment; provided, however, that such benefits provided in this Code section shall not be granted for injuries resulting from a single incident for more than a total of 180 working days. An employee, firefighter, or officer shall be required to submit to his department head satisfactory evidence of such disability.

(d) Benefits made available under this Code section shall be subordinate to any workers' compensation benefits which the employee is awarded and shall be limited to the difference between the amount of workers' compensation benefits actually paid and the amount of the employee's regular compensation.

(e) Any employee of the Department of Corrections, employee of the State Board of Pardons and Paroles, employee of the Department of Natural Resources, employee of the Department of Revenue, or law enforcement officer who qualifies for disability allowances pursuant to Code Section 47-2-221 shall not be entitled to any benefits provided in this Code section.

(f) This Code section shall not apply to employees of the Department of Transportation covered by Code Section 32-2-7. (Code 1981, § 45-7-9, enacted by Ga. L. 1986, p. 1491, § 1; Ga. L. 1988, p. 738, § 1; Ga. L. 1992, p. 2966, § 1; Ga. L. 2002, p. 660, § 4(15); Ga. L. 2002, p. 1259, § 11(15).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted "firefighter" for "fireman" in the last sentence of subsection (c). The second 2002 amendment, effective July 1, 2002, made identical changes.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the definitions in subsection (a) were alphabetized.

Editor's notes. — Ga. L. 1992, p. 2966,

§ 4, not codified by the General Assembly, provides that: "Section 1 of this Act shall be repealed in its entirety 30 days after it becomes effective upon its approval by the Governor or upon its becoming law without such approval; provided, however, that any benefit granted prior to the repeal of the Act shall continue to exist beyond the date of such repeal."

ARTICLE 2

REIMBURSEMENT OF EXPENSES

Cross references. — Motor vehicles and aircraft for use by state officials, Ch. 19, T. 50.

45-7-20. Reimbursement of travel costs for certain officials.

Except as provided in Code Section 45-7-21, each state official designated in Code Section 45-7-4 shall be reimbursed from state funds for actual transportation costs while traveling by public carrier, the legal mileage rate for use of a personal automobile, and the actual cost of lodging and meals while away from his office on official state business. This Code section shall not apply to the adjutant general, superior court judges, district attorneys, members of the General Assembly, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Speaker Pro Tempore of the House of Representatives, all of whose expenses and allowances shall be paid as provided for in Code Section 45-7-4. This Code section shall not apply to the Lieutenant Governor during sessions of the General Assembly. During such sessions, the Lieutenant Governor shall receive the same expense allowance per day as that received by a member of the General Assembly, plus reimbursement for actual transportation costs while traveling by public carrier and the legal mileage rate for use of a personal automobile. No official provided for in Code Sections 45-7-3, 45-7-4, this Code section, and 45-7-21 shall be reimbursed from state funds for any transportation, mileage, lodging, or meals for which he is reimbursed from funds other than state funds. (Ga. L. 1973, p. 701, § 3; Ga. L. 1978, p. 4, § 3; Ga. L. 1984, p. 22, § 45.)

Cross references. — Contingent expense and travel allowances for reporters of superior courts, § 15-14-6. Legal mileage rate, § 50-19-7.

Editor's notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to develop, issue, review and revise rules and

regulations governing reimbursement of travel expenses of employees of state agencies, boards and commissions.

The State Department of Audits and Accounts is further authorized and directed to include in its annual audit of the financial accounts of state agencies, boards and commissions any audit exception to the rules and regulations.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

ALR. — Per diem compensation of public officer, 1 ALR 276.

Allowance of mileage or traveling ex-

penses to officer as affected by the use of his vehicle for transportation, 112 ALR 172.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements, 5 ALR2d 1182.

45-7-21. Expense allowance and travel cost reimbursement for members of certain boards and commissions.

(a) Each member of the boards and commissions enumerated in this Code section shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member

of a board or commission is in attendance at a meeting of such board or commission, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance. The expense allowance and reimbursement provided for in this Code section shall be paid in lieu of any per diem, allowance, or other remuneration now received by any such member for such attendance. The existing law relative to any limitation on the number of meeting days and remuneration for service on committees or subcommittees of any such board or commission shall remain in effect. The boards and commissions to which this Code section shall be applicable are as follows:

- (1) State Board of Education;
- (2) State Medical Education Board;
- (3) Board of Regents of the University System of Georgia;
- (4) Board of Corrections;
- (5) Board of Industry, Trade, and Tourism;
- (6) Board of Natural Resources;
- (7) State Transportation Board;
- (8) Dental Education Board;
- (9) Georgia Student Finance Commission;
- (10) Veterans Service Board;
- (11) Georgia Agricultural Exposition Authority;
- (12) Georgia Board for Physician Workforce;
- (13) Georgia Music Hall of Fame Authority;
- (14) Georgia Sports Hall of Fame Authority;
- (15) Georgia Rail Passenger Authority;
- (16) Georgia Tobacco Community Development Board;
- (16.1) State Board of Technical and Adult Education; and
- (17) The delegation from the State of Georgia to the Southern Dairy Compact Commission.

(b) Whenever this Code section or any other law of this state provides that members of any board, commission, or other body shall receive the same daily expense allowance as members of the General Assembly, whether by specific reference to this Code section or any other law or by a more general reference, the members of such board, commission, or other body shall receive a daily expense allowance of \$105.00. Such \$105.00 amount

shall apply for members of such boards, commissions, and other bodies, regardless of whether the amount actually received by members of the General Assembly under Code Section 28-1-8 is more or less than \$105.00. The provisions of this subsection shall control over any conflicting provisions of any other earlier enacted law. (Ga. L. 1973, p. 701, § 4; Ga. L. 1978, p. 4, § 4; Ga. L. 1984, p. 427, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1989, p. 1641, § 11; Ga. L. 1990, p. 6, § 2; Ga. L. 1990, p. 1320, § 1; Ga. L. 1993, p. 809, § 2; Ga. L. 1994, p. 1251, § 2; Ga. L. 1995, p. 1041, § 2; Ga. L. 1999, p. 721, § 1.1; Ga. L. 1999, p. 1242, § 3; Ga. L. 1999, p. 1249, § 2; Ga. L. 2000, p. 1344, § 1; Ga. L. 2001, p. 924, § 1.)

The 2000 amendment, effective July 1, 2000, in subsection (a), deleted “and” at the end of paragraph (16) and added paragraph (16.1).

The 2001 amendment, effective July 1, 2001, substituted “\$105.00” for “\$75.00” in three places throughout subsection (b).

Cross references. — Expense allowance authorized for delegation to the Southern Dairy Compact Commission, § 2-20-1. Daily expense allowance authorized for members of General Assembly, § 45-7-4(a)(22). Legal mileage allowance, § 50-19-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, paragraph (11) as added by Ga. L. 1990, p. 1320, § 1, was redesignated as paragraph (12).

Pursuant to Code Section 28-9-5, in 1998, “Georgia Board for Physician Workforce” was substituted for “Joint Board of Family Practice” in paragraph (12).

Pursuant to Code Section 28-9-5, in 1999, in subsection (a), paragraph (16) as enacted by Ga. L. 1999, p. 1249, § 2, was redesignated as paragraph (17), “and” was deleted from the end of paragraph (15), and “; and”

was substituted for a period at the end of paragraph (16).

Editor’s notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to develop, issue, review and revise rules and regulations governing reimbursement of travel expenses of employees of state agencies, boards and commissions.

The State Department of Audits and Accounts is further authorized and directed to include in its annual audit of the financial accounts of state agencies, boards and commissions any audit exception to the rules and regulations.

Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly provides that: “In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act.”

Law reviews. — For note on 1999 amendment to this section, see 16 Ga. St. U.L. Rev. 1 (1999).

JUDICIAL DECISIONS

Purpose of O.C.G.A. §§ 45-7-3 and 45-7-21 is to set limitations on current earnings and expenses of those in high governmental office and not to penalize those who assume such office by requiring forfeiture of previously accrued payment obligation of the state. *State v. O’Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980).

Applicability to officers already in office. — During tenure as Commissioner of De-

partment of Administrative Services, appellee was subject to limitations regarding compensation contained in O.C.G.A. §§ 45-7-3 and 45-7-21, notwithstanding that the appellee assumed office several months prior to enactment of legislation governing compensation. *State v. O’Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Provisions for per diem allowances to be read in pari materia. — The statutory provision, O.C.G.A. § 12-6-3, for per diem subsistence allowances and mileage allowances to the Forestry Commission members does not refer to other specifically named commissions or boards, but says only that the per diem subsistence and mileage allowances shall not exceed those authorized by law for other commissions or boards; therefore, the Forestry Commission should set the allowable rate of daily subsistence allowance in accordance with O.C.G.A. § 45-7-21 and, in reading the applicable provisions in *pari materia*, the Forestry Commission is autho-

rized to set the per diem subsistence allowance for members in such amount as it may choose, but not in excess of the amount specified in O.C.G.A. § 45-7-21 for each day of actual attendance at meetings of the Forestry Commission. 1978 Op. Att'y Gen. No. 78-26.

State Transportation Board. — Members of the State Transportation Board of Georgia are entitled to receive, as the daily expense allowance allocated them by O.C.G.A. § 45-7-21, their actual expenses for attendance at meetings which are held out-of-state. 1994 Op. Att'y Gen. No. 94-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

ALR. — Power of administrative officer or board in respect of compensation of public officer or employee under a statute fixing

maximum or minimum compensation, 70 ALR 1050.

Constitutional provision fixing or limiting salary of public officer as precluding allowance for expenses or disbursements, 5 ALR2d 1182.

45-7-22. Reimbursement for relocation expenses — Authorization generally.

Notwithstanding any law, rule, or regulation to the contrary, a state department may reimburse an employee of state government for expenses incurred for transportation of household goods and expenses incident to a change of residence from one part of the state to another as a result of an action of the state department requiring such relocation when such action is in the best interest of the department; provided, however, that the Department of Industry, Trade, and Tourism may also reimburse an employee of that department for transportation of household goods and expenses incident to a change of residence to a foreign country as a result of an action of that department requiring such relocation when such action is in the best interest of that department. (Ga. L. 1973, p. 708, § 1; Ga. L. 1981, p. 429, § 1; Ga. L. 1989, p. 1641, § 12.)

Editor's notes. — Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides that: "In the event of any substan-

tive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-7-22 covers expenses of transfers both to and from foreign coun-

tries. — Under O.C.G.A. § 45-7-22 the General Assembly intended to pay both moving

expenses for employee when the employee is transferred to a foreign country and again when the employee is transferred back and each transfer is a separate move. 1981 Op. Att'y Gen. No. 81-42.

Employee may be required to commit to remain employed for one year after move. — Department of Industry and Trade [now Department of Industry, Trade, and Tourism] is authorized to pay reasonable moving expenses for its employees who are transferred at convenience of department to a foreign country for both move to foreign country and for move back to Georgia so long as employee signs written commitment to remain in employ of department for at least one year after a reimbursable move. 1981 Op. Att'y Gen. No. 81-42.

Unauthorized procedure for reimbursement of expenses. — A "per diem allow-

ance" of \$20.00 per day to public officers and employees against relocation expenses is not a reimbursement of expenses incurred, as provided for in O.C.G.A. § 45-7-22, and consequently such a procedure is not authorized by the underlying statutory authority. 1973 Op. Att'y Gen. No. 73-115.

Reimbursement of expenses of moving a mobile home. — While the cost of moving a mobile home may not be reimbursed as an expense incident to a change of residence, the Office of Planning and Budget has the authority to determine whether the expense of moving a mobile home as an adjunct to moving household goods is normal and reasonable and, if it finds it is, to establish rules authorizing the reimbursement of expenses so incurred. 1973 Op. Att'y Gen. No. 73-171.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-23. Reimbursement for relocation expenses — Conditions.

Before the reimbursement of expenses to transferred employees may take place, the following conditions must be satisfied:

(1) The department which employs the person transferred must certify that the move was in the best interest of the department and that the expenses incurred are reasonable and proper; and

(2) The employee must sign an agreement that he will remain employed by the department in the location to which the move was made for a period of not less than one year following the effective date of the move, unless separated or transferred for reasons beyond his control and acceptable to the department concerned. In case of violation of such agreement, any funds expended by the state for expense reimbursement will be recoverable from the employee concerned as a debt due the state. (Ga. L. 1973, p. 708, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Transfer to foreign country and transfer back to Georgia constitute separate moves. — Under O.C.G.A. § 45-7-23 the General Assembly intended to pay both moving expenses for employee when the employee is transferred to a foreign country and again

when transferred back and each transfer is a separate move. 1981 Op. Att'y Gen. No. 81-42.

Employee may be required to commit to remain employed for one year after move. — Department of Industry and Trade [now

Department of Industry, Trade, and Tourism] is authorized to pay reasonable moving expenses for its employees who are transferred at convenience of department to a foreign country for both move to foreign

country and for move back to Georgia so long as employee signs written commitment to remain in employ of department for at least one year after a reimbursable move. 1981 Op. Att'y Gen. No. 81-42.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-24. Reimbursement for relocation expenses — Establishment of rules, regulations, and policies.

The Office of Planning and Budget shall establish such rules, regulations, and policies as are necessary to administer such a program of reimbursement for all state employees. (Ga. L. 1973, p. 708, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-25. Advance travel funds — Employee trust accounts authorized.

Each department, agency, institution, and board of the state is authorized to establish employee trust accounts as are necessary to account for state funds which are advanced to employees for travel purposes in the conduct of official state business and as are necessary to carry out the intent and purpose of this Code section and Code Sections 45-7-26 through 45-7-28. (Ga. L. 1973, p. 842, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Authorized purposes not unconstitutional.

— The use of public funds for the purposes authorized under O.C.G.A. §§ 45-7-25 through 45-7-28 does not violate Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) or Ga. Const. 1976, Art. VII, Sec. III, Para. IV (see Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII). 1973 Op. Att'y Gen. No. 73-87.

Authorized purposes do not constitute a gratuity or a loan. — The procedures authorized by O.C.G.A. §§ 45-7-25 through 45-7-28 do not constitute either a gratuity or a loan to an employee; payments to an employee to compensate the employee for expenses to be incurred in rendering services to the state clearly do not constitute a

gratuity where the employee is accountable for failure to employ the funds for that purpose; nor do such payments constitute a loan simply because there is a requirement that the employee account for such funds. 1973 Op. Att'y Gen. No. 73-87.

Liability of employee for default on accounting obligation. — A default by an employee in obligation to account for the funds advanced to the employee for the purposes stated in O.C.G.A. § 45-7-25 is a failure "faithfully to account for all moneys coming into (his) hands," and thus is a claim cognizable under the bond required by O.C.G.A. §§ 45-8-2 and 45-8-8; in the event the employee is not bonded as required by O.C.G.A. § 45-8-2, then the limitation of

liability with respect to the principal and surety on the bond of the head of that state department contained in O.C.G.A. § 45-8-8 is no longer applicable and the historical

rules of liability would in that event apply to the department head and surety. 1973 Op. Att'y Gen. No. 73-87.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-26. Advance travel funds — Promulgation of rules and regulations for accounting of funds.

The director of the Office of Planning and Budget shall develop the necessary rules, regulations, and procedures to govern the advance of state funds to employees prior to travel in the conduct of official state business and to provide for proper accounting of the state funds advanced to such employees on a timely basis following such employees' return from travel status. (Ga. L. 1973, p. 842, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Authorized purposes not unconstitutional. — The use of public funds for the purposes authorized under O.C.G.A. §§ 45-7-25 through 45-7-28 does not violate Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) or Ga. Const. 1976 Art. VII, Sec. III, Para. IV (see Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII). 1973 Op. Att'y Gen. No. 73-87.

Authorized purposes do not constitute a gratuity or a loan. — The procedures authorized by O.C.G.A. §§ 45-7-25 through

45-7-28 do not constitute either a gratuity or a loan to an employee; payments to an employee to compensate the employee for expenses to be incurred in rendering services to the state clearly do not constitute a gratuity where the employee is accountable for his failure to employ the funds for that purpose; nor do such payments constitute a loan simply because there is a requirement that the employee account for such funds. 1973 Op. Att'y Gen. No. 73-87.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-27. Advance travel funds — Employee to file accounting of funds granted; employee to reimburse unused funds.

Each employee granted an advance of state funds under this Code section and Code Sections 45-7-25, 45-7-26, and 45-7-28 shall be the custodian of state funds entrusted to him, shall file an accounting of such funds, and shall reimburse unused travel advances as required by the rules and regulations adopted by the director of the Office of Planning and Budget. (Ga. L. 1973, p. 842, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 225.

45-7-28. Advance travel funds — Creation of lien against money due employee where employee fails to file accounting or reimburse funds.

Should any employee granted a travel advance under this Code section and Code Sections 45-7-25 through 45-7-27 fail to file an accounting and reimbursement as provided by the rules and regulations adopted by the director of the Office of Planning and Budget, the head of each agency shall file with the director of the Office of Planning and Budget a certification of the amount so advanced, which shall then become a lien against any and all funds or moneys due the employee from the state or from the Employees' Retirement System of Georgia or the Teachers Retirement System of Georgia. (Ga. L. 1973, p. 842, § 4; Ga. L. 1990, p. 8, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Authorized purposes not unconstitutional.

— The use of public funds for the purposes authorized under O.C.G.A. §§ 45-7-25 through 45-7-28 does not violate Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) or Ga. Const. 1976, Art. VII, Sec. III, Para. IV (see Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII). 1973 Op. Att'y Gen. No. 73-87.

Authorized purposes do not constitute a gratuity or a loan. — The procedures authorized by O.C.G.A. §§ 45-7-25 through 45-7-28 do not constitute either a gratuity or a loan to an employee; payments to an employee to compensate the employee for expenses to be incurred in rendering services to the state clearly do not constitute a gratuity where the employee is accountable for failure to employ the funds for that purpose; nor do such payments constitute a loan simply because there is a requirement that the employee account for such funds. 1973 Op. Att'y Gen. No. 73-87.

Liability of employee for default on accounting obligation. — A default by an employee in obligation to account for the funds

advanced to the employee for the purposes stated in O.C.G.A. § 45-7-25 is a failure "faithfully to account for all moneys coming into (his) hands," and thus is a claim cognizable under the bond required by O.C.G.A. §§ 45-8-2 and 45-8-8; in the event the employee is not bonded as required by O.C.G.A. § 45-8-2, then the limitation of liability with respect to the principal and surety on the bond of the head of that state department contained in O.C.G.A. § 45-8-8 is no longer applicable and the historical rules of liability would in that event apply to the department head and surety. 1973 Op. Att'y Gen. No. 73-87.

Employees' Retirement System assets cannot be encumbered by lien to secure unreimbursed travel advance. — None of the assets of the Employees' Retirement System, including funds held in members' annuity savings fund accounts, can be encumbered by a lien created to secure unreimbursed travel advance; however, such a lien can attach to other funds due employee by state. 1980 Op. Att'y Gen. No. 80-114.

45-7-28.1. Employee travel reimbursement; rules and regulations to be issued by the Department of Audits and Accounts and the Office of Planning and Budget.

(a) The Department of Audits and Accounts and the Office of Planning and Budget are authorized and directed to:

(1) Develop jointly and issue such rules and regulations governing employee travel reimbursement that promote economy and efficiency in state government and which treat employees fairly and equitably; and

(2) Review such rules and regulations at least annually and revise them as necessary.

(b) The agencies, boards, and commissions of this state are directed to adhere to the employee travel reimbursement rules and regulations established by the Department of Audits and Accounts and the Office of Planning and Budget unless granted an exception on an individual basis for unusual circumstances by both of the issuing agencies. The Department of Audits and Accounts is authorized and directed to include in its annual audits of the financial accounts of the state agencies, boards, and commissions any audit exception to such established rules and regulations. (Ga. L. 1979, p. 1365; Code 1981, § 45-7-28.1, enacted by Ga. L. 1982, p. 3, § 45; Ga. L. 1990, p. 8, § 45.)

45-7-29. Reimbursement for expenses of lodging and air fare — Supporting documentation required.

(a) No official or employee of the executive, legislative, or judicial branch of state government shall be reimbursed from public funds for expenses for lodging and air fare incurred in the performance of his duties unless a bill, receipt, or similar supporting document showing payment therefor or an explanation of the absence of such documentation shall be submitted when applying for reimbursement.

(b) The requirements of subsection (a) of this Code section shall be in addition to any other requirements relative to reimbursement for any expenses incurred by any such official or employee in the performance of his duties which are now or hereafter provided for by law. The requirements of subsection (a) of this Code section also shall not preclude the promulgation by any agency of the executive, legislative, or judicial branch of state government of any rule or regulation or policy relative to reimbursement for any expenses. (Ga. L. 1978, p. 1919, § 1.)

Editor's notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to de-

velop, issue, review and revise rules and regulations governing reimbursement of travel expenses of employees of state agencies, boards and commissions. Such rules and regulations are to be adhered to by all

state agencies, boards and commissions, unless granted exceptions on an individual

basis for unusual circumstances by both issuing agencies.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 223, 225.

ALR. — Public officer's right and duties in

respect of mileage and other allowances incident to duties of his office but which represented no actual expense or outlay by him, 81 ALR 493.

45-7-30. Reimbursement for expenses of lodging and air fare — Reimbursement of first-class air fare.

Except as provided in this Code section, no state official or employee, when traveling by commercial air carrier on a first-class basis, shall be reimbursed for that portion of the first-class air fare which exceeds the amount of the fare of the next lowest fare for the flight on which such official or employee is traveling. This shall not prohibit the reimbursement for the entire cost of first-class air fare under any of the following conditions:

(1) Space is not otherwise available;

(2) A licensed medical practitioner certifies that because of a person's mental or physical condition specific air travel arrangements are required; or

(3) The commissioner of public safety certifies that specific air travel arrangements are necessary for security reasons. (Ga. L. 1978, p. 1919, § 2.)

Editor's notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to develop, issue, review and revise rules and regulations governing reimbursement of

travel expenses of employees of state agencies, boards and commissions. Such rules and regulations are to be adhered to by all state agencies, boards and commissions, unless granted exceptions on an individual basis for unusual circumstances by both issuing agencies.

RESEARCH REFERENCES

ALR. — Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which

represented no actual expense or outlay by him, 81 ALR 493.

45-7-31. Reimbursement for expenses of lodging and air fare — Per diem allowances.

This Code section and Code Sections 45-7-29, 45-7-30, and 45-7-32 shall not apply to per diem allowances authorized by law for officials or employees. (Ga. L. 1978, p. 1919, § 3.)

Editor's notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to develop, issue, review and revise rules and regulations governing reimbursement of

travel expenses of employees of state agencies, boards and commissions. Such rules and regulations are to be adhered to by all state agencies, boards and commissions, unless granted exceptions on an individual basis for unusual circumstances by both issuing agencies.

RESEARCH REFERENCES

ALR. — Public officer's rights and duties in respect of mileage and other allowances incident to duties of his office but which

represented no actual expense or outlay by him, 81 ALR 493.

45-7-32. Reimbursement for expenses of lodging and air fare — Penalty for violations.

Any person who intentionally violates Code Sections 45-7-29 through 45-7-31 shall be guilty of a misdemeanor. (Ga. L. 1978, p. 1919, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Extortion, § 257.

45-7-33. Reimbursement for expenses in filing application for commercial driver's license.

Notwithstanding any law, rule, or regulation to the contrary, a state department may reimburse an employee of state government for expenses incurred in filing an application for obtaining a commercial driver's license as such application fee is set forth in Article 7 of Chapter 5 of Title 40. (Code 1981, § 45-7-33, enacted by Ga. L. 1990, p. 131, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted "of the Offi-

cial Code of Georgia Annotated" at the end of this Code section.

45-7-34. Rules and regulations for administering reimbursement programs.

The Office of Planning and Budget shall establish such rules, regulations, and policies as are necessary to administer such a program of

reimbursement for all state employees. (Code 1981, § 45-7-34, enacted by Ga. L. 1990, p. 131, § 1.)

ARTICLE 3

SALARY DEDUCTIONS

45-7-50. Deductions for United States savings bonds.

The disbursing or fiscal officer of any state department, board, bureau, commission, agency, municipality, county, or other political subdivision thereof may deduct from the salary of any employee of this state, county, municipality, or political subdivision thereof such amount as the employee shall authorize in writing for the purchase of United States savings bonds for the employee. The written authorization shall be filed with the disbursing or fiscal officer of such state department, board, bureau, commission, agency, municipality, or county, and he shall make such rules and regulations governing the purchase of the bonds as he may deem necessary, which rules and regulations shall be incorporated in the employee's written authorization. The authorization of the employee may be withdrawn by the employee at any time upon filing written notice of withdrawal with said disbursing or fiscal officer. (Ga. L. 1950, p. 323, § 1.)

RESEARCH REFERENCES

C.J.S. — 51B C.J.S., Labor Relations,
§ 1182.

45-7-51. Deductions for payment of insurance premiums.

(a) Any department or agency of the state is authorized to deduct voluntarily designated amounts from the salaries or wages of its full-time employees for the purpose of payment of insurance premiums to a designated insurance company or designated insurance companies which are licensed to do business in Georgia by the Commissioner of Insurance. No such deduction shall be made without the approval of the head of the department or agency employing the designating employee. No such deductions shall be made unless at least 15 percent of the full-time employees of a department or agency request such deductions which are to be paid to a particular insurance company. No such deductions shall be made without individual written requests of the employees, which requests shall designate the exact amount which is to be deducted. Any employee who consents to such a deduction is authorized to terminate the deduction upon two weeks' written notice. Each department head may discontinue allowing such deductions upon reasonable notice to the company and his employees.

(b) The fiscal authorities or other employees of the various departments or agencies of the state will not incur any liability for errors or omissions made in the performance of the payroll deduction agreement between the department or agency and the employees, provided that no fiscal authority or employee of this state is protected from criminal or civil liability for conversion, theft by conversion, theft by taking, theft by extortion, theft by deception, or any other intentional misappropriation of the moneys or property of another for his own use. (Ga. L. 1976, p. 1603, § 1; Ga. L. 1990, p. 8, § 45.)

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Distinction between section's optional life insurance program and state deferred compensation law. — State deferred compensation law pertains to deferred compensation plan which is aimed primarily at deferring compensation and taxable event of receiving compensation until later time. O.C.G.A. § 45-7-51 creates optional life insurance pro-

gram, which is to be administered by each separate agency, whereas deferred compensation plan is to be administered by State Personnel Board. Accordingly, there is no conflict between the two programs and both may exist simultaneously. 1980 Op. Att'y Gen. No. 80-6.

RESEARCH REFERENCES

C.J.S. — 51B C.J.S., Labor Relations, § 1182.

Insurable interest of public in life of officer or employee, 62 ALR 133.

ALR. — Right to use public funds to carry insurance for public officers or employees, 16 ALR 1089; 27 ALR 1267.

45-7-52. Deductions for payments to credit unions.

(a) Any department or agency of the state is authorized to deduct designated amounts from the salaries or wages of its employees for the purpose of payment of deposits or indebtedness to a department or agency credit union if such department or agency credit union is a corporation and existing under the laws of this state. No such deduction shall be made without the approval of the head of the department or agency. No such deductions shall be made without the written request of the employee, which request shall designate the exact amount which is to be deducted. Any employee who has consented to a deduction is authorized to withdraw from such plan upon two weeks' written notice.

(b) The fiscal authorities or other employees of the various departments or agencies will not incur any liability for errors or omissions made in the performance of the agreement between the department or agency and the employee. (Ga. L. 1964, p. 255, §§ 1, 2.)

Cross references. — Credit unions generally, § 7-1-630 et seq.

OPINIONS OF THE ATTORNEY GENERAL

No state department, board or agency can lawfully deduct labor union dues from a public employee's salary regardless of whether those dues are paid directly to the union or through a collection agency, like the departmental credit union. 1976 Op. Att'y Gen. No. 76-119.

RESEARCH REFERENCES

Am. Jur. 2d. — 48 Am. Jur. 2d, Labor and Labor Relations, § 387.

C.J.S. — 51B C.J.S., Labor Relations, § 1182.

45-7-53. Deductions for payment of parking and van pool fees.

(a) Any department, agency, authority, or commission of the state is authorized to deduct designated amounts from the salaries or wages of its employees for the purpose of payment of capitol hill parking and van pool fees. No such deduction shall be made without the approval of the head of the department, agency, authority, or commission and the Georgia Building Authority. No such deduction shall be made without the written request of the employee, which request shall designate the exact amount which is to be deducted. Any employee who has consented to a deduction is authorized to withdraw from such plan upon one month's written notice.

(b) The fiscal authorities or other employees of the various departments, agencies, authorities, or commissions will not incur any liability for errors or omissions made in the performance of the agreement between the department, agency, authority, or commission and the employee. (Ga. L. 1980, p. 1049, §§ 1, 2.)

45-7-54. Voluntary contributions by state government employees through payroll deductions to certain not for profit organizations.

(a) Any department, agency, authority, or commission of the state is authorized to deduct designated amounts from the salaries or wages of its employees and remit such moneys to not for profit organizations, associations, or corporations providing tangible services and benefits to state government or its employees. Except as provided in subsection (b) of this Code section, no such deduction shall be made unless at least 2,500 of the full-time employees of the state request such deduction. Where 2,500 or more full-time employees of the state request payroll deduction services to any not for profit organization, association, or corporation having among its objectives educational, legislative, or professional development activities related to promoting and enhancing the efficiency, productivity, and welfare of state government services or of state government employees, then the state shall provide such deductions as an additional employment benefit to its employees.

(b) Where 500 or more full-time state employees who are employed in the Division of Family and Children Services or in the law enforcement or

registered nursing disciplines request payroll deduction services to any not for profit association having among its specific objectives professional development activities related to such employment or promoting or enhancing law enforcement or registered professional nursing in the State of Georgia, then the state shall provide such deductions as an additional employment benefit to its employees. This provision shall not be interpreted to require the agency or state to provide the funds for any employee's dues or contributions.

(c) The commissioner of the State Merit System of Personnel Administration shall have the authority to administer this Code section and to determine and compel compliance with its provisions.

(d) No deduction shall be made under this Code section without the express written and voluntary consent of the employee. Each such request shall designate the exact amount to be deducted. Any employee who consents to such deduction is authorized to terminate the deduction with two weeks' written notice to the department, agency, authority, or commission.

(e) No deduction shall be made under this Code section to any organization, association, or corporation which engages in collective bargaining with the state or encourages its members to strike or stop work.

(f) Each department, agency, authority, or commission of the state shall collect from the deductions withheld a cost of administration fee not to exceed 1 percent of the total deduction collected.

(g) No person shall disclose to any other person the name of any employee deducting amounts, or the organizations, associations, or corporations designated, except as is necessary to accomplish the purpose of this article or as otherwise authorized in writing by the individual employee.

(h) Departments, agencies, authorities, and commissions and their employees shall not incur any liability for errors or omissions made in performance of the payroll deduction agreement between the state and the employee, provided that this Code section does not confer immunity from criminal or civil liability for conversion, theft by conversion, theft by taking, theft by extortion, theft by deception, or any other intentional misappropriation of the money or property of another. (Code 1981, § 45-7-54, enacted by Ga. L. 1994, p. 699, § 1; Ga. L. 1995, p. 831, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "not for profit" for "not-for-profit" twice in subsection (a) and in subsection (b).

Cross references. — Deductions for contributions or dues to interdisciplinary charitable associations, § 20-3-83.

OPINIONS OF THE ATTORNEY GENERAL

Additional voluntary salary deduction programs. — A not-for-profit organization whose membership dues are currently being deducted under O.C.G.A. § 45-7-54 is autho-

rized to have other voluntary member tangible benefits approved for automatic payroll deduction. 1996 Op. Att'y Gen. No. U96-11.

45-7-55. Deductions for transit passes and other fare media.

(a) It is the purpose of this Code section to permit voluntary deductions from wages or salaries of employees of the State of Georgia for the purchase of transit passes and other fare media for the benefit of these employees and the State of Georgia through a process which involves minimal disruption of work time and provides reasonable assurance to the employees of reliable transportation to and from work.

(b) Any department, agency, authority, or commission of the state is authorized to participate in any program to provide a mass transit employee benefit to its employees and may, but need not, bear all or a portion of the cost of such fare media from funds specifically appropriated for this purpose.

(c) Any such participating state entity is authorized to deduct designated amounts from the wages or salaries of its employees for the purpose of facilitating employee purchase of transit passes and other fare media. No such deduction shall be made without the approval of the head of the participating state entity. No such deduction shall be made without the written request of the employee, who may withdraw that person's request upon one month's written notice.

(d) The fiscal authorities or other employees of any participating state entity will not incur any liability for errors or omissions made in the performance of the mass transit employee benefit program. (Code 1981, § 45-7-55, enacted by Ga. L. 1995, p. 831, § 1.1.)

45-7-56. Deductions for purchase of personal computing and computer related equipment.

(a) As used in this Code section, the term "local unit of administration" means any county or independent board of education.

(b) It is the purpose of this Code section to permit voluntary deductions from wages or salaries of employees of the State of Georgia and local units of administration for the purchase of personal computing and computer related equipment through an employee purchase program facilitated by and through the Georgia Technology Authority.

(c) Any department, agency, authority, or commission of the state or any local unit of administration is authorized to deduct designated amounts

from the wages or salaries from its employees for the purpose of facilitating employee purchases of personal computing and computer related equipment through an employee purchase program facilitated by and through the Georgia Technology Authority. No such deduction shall be made under this Code section without the express written and voluntary consent of the employee. Each such request shall designate the exact amount to be deducted. Any employee who has consented to a deduction is authorized to withdraw from such salary reduction with two weeks' written notice; provided, however, that such withdrawal shall not relieve any employee of any outstanding indebtedness incurred under such purchase program.

(d) (1) The fiscal authorities or other employees of the various departments or agencies of this state will not incur any liability for errors or omissions made in the performance of the agreement between the state and the employee.

(2) The fiscal authorities or other employees of local units of administration will not incur any liability for errors or omissions made in the performance of the agreement between the local unit of administration and the employee.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, this Code section does not confer immunity from criminal or civil liability for conversion, theft by conversion, theft by taking, theft by extortion, theft by deception, or any other intentional misappropriation of the money or property of another.

(e) If a state employee or public school employee leaves employment for any reason and a balance is owing for the computer or equipment, then, in that event, the state or board of education or the state retirement system shall have the right to deduct the balance owing from any funds under the control of the state or board of education or state retirement system to which said employee would otherwise be entitled. (Code 1981, § 45-7-56, enacted by Ga. L. 2001, p. 867, § 2; Ga. L. 2002, p. 415, § 45.)

Effective date. — This Code section became effective April 27, 2001. and correct the Code, revised capitalization and punctuation in subsection (e).

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize,

ARTICLE 4

DISCLOSURE OF PROFESSIONAL SERVICES FEES

45-7-70. Purpose of article.

It is in the best interests of a free society that citizens be fully informed as to the conduct of their government and that those who serve the public by performing services requiring special qualification, training, or knowledge

and the exercise of discretion or judgment be known and identified. To ensure that the public may better evaluate the stewardship of elected and appointed officials in the use of public funds for the purchase of professional services from other than full-time employees, it is appropriate that disclosure be made of the use of professional personnel and of the fees and reimbursement paid for such services and incidental expenses. (Ga. L. 1976, p. 978, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 26, 28.

C.J.S. — 76 C.J.S., Records, § 10, § 62 et seq., § 99 et seq.

45-7-71. Professional services fees to be identified in financial records.

In the fiscal and financial records of any state agency which are submitted for audit to the state auditor, any fees for services or reimbursable expenses charged to any authority created, authorized, or otherwise provided for by state law or charged to any board, bureau, commission, committee, department, institution, office, retirement system, or any other agency of the state by any consultant, architect, or attorney at law shall be identified by type of fee or expense and the purpose for which paid, to whom paid, and the dates when such payment or payments of fees and expenses were made. Salaries paid and reimbursement of expenses made to professional persons employed on a full-time basis by the authorities or state agencies are not included within the reporting requirement set forth in this Code section. (Ga. L. 1976, p. 978, § 2.)

45-7-72. Provision of copy of statement or report to Attorney General and state auditor.

A copy of each statement or report, referred to in Code Section 45-7-71, of any authority or state agency in which a fee or expense paid to a consultant or member of a profession is identified and reported shall be provided to the Attorney General and the state auditor unless such statement or report is otherwise required by law to be provided to the Attorney General or the state auditor. (Ga. L. 1976, p. 978, § 3; Ga. L. 1984, p. 851, § 1.)

45-7-73. State auditor to prescribe form and date for submission of reports.

Where necessary to accomplish the purposes of this article, the state auditor shall by rule or regulation prescribe the form in which the reports of professional services shall be made by the authority or state agency. The state auditor shall also establish dates for the submission of the reports required by this article. (Ga. L. 1976, p. 978, § 4.)

45-7-74. State auditor to provide report of fees to various state officials.

The state auditor shall annually provide to the Governor, to each house of the General Assembly, to the Attorney General, and to the Secretary of State a report in which the accumulated totals of payments of fees and expenses to members of professions are set forth, identifying:

- (1) The person or persons to whom such payments were made;
- (2) The professions of such person or persons;
- (3) The totals of such payments; and
- (4) The authority or state agency which has retained such professional person or persons. (Ga. L. 1976, p. 978, § 5.)

ARTICLE 5**STATE COMMISSION ON COMPENSATION****45-7-90. Established; purpose.**

A State Commission on Compensation is established for the purpose of assisting the General Assembly in setting the compensation of constitutional state officers, including members of the General Assembly and full-time heads of state agencies, authorities, boards, bureaus, commissions, committees, and departments whose compensation is set by the Constitution, by law, or by Act of the General Assembly. (Ga. L. 1971, p. 103, § 1; Ga. L. 1982, p. 3, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Public officers covered by commission. — For a listing of state officials and board members whose compensation is set by the State Commission on Compensation. See 1972 Op. Att'y Gen. No. 72-121.

Includes superior court judges. — Superior court judges' salaries are within the purview of the recommendation of the State Commission on compensation. 1971 Op. Att'y Gen. No. 71-173.1.

Secretarial services for superior court judges not covered by commission. — The recommendation to provide allocations for secretarial services to superior court judges is not directly within the statutory authority of the commission, but could be made on an informal basis. 1971 Op. Att'y Gen. No. 71-173.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Administrative Law, § 23. 63C Am. Jur. 2d, Public Officers and Employees, § 276.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 226. 73 C.J.S., Public Administrative Law and Procedure, §§ 8, 9.

45-7-91. Composition; qualifications, appointment, vacancies of members.

The commission shall be composed of 12 members who shall serve for terms of four years and until their successors shall have been appointed and qualified. No person shall be qualified for appointment to office as a member of the commission if he is an officer or employee of the state at the time of his selection for appointment. Four members shall be appointed by the Governor, at least one of whom shall be regularly engaged in the field of business finance or business management. Two members shall be appointed by the Lieutenant Governor, at least one of whom shall be experienced in labor-management relations. Two members shall be appointed by the Speaker of the House of Representatives, at least one of whom shall be experienced in labor-management relations. Four members shall be appointed by the Justices of the Supreme Court, at least one of whom shall be authorized to practice law in this state. Should any vacancy on the commission occur from death, resignation, or otherwise, the appointing authority shall appoint a successor member to serve during the unexpired term. (Ga. L. 1971, p. 103, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Administrative Law, §§ 37, 38. 63C Am. Jur. 2d, Public Officers and Employees, §§ 57, 62, 88, 105 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 27, 35, 74-79. 73 C.J.S., Public Administrative Law and Procedure, §§ 8, 9.

45-7-92. Oath, salary, expenses of members; meetings generally.

Members of the commission shall take an oath to uphold the Constitution and laws of the United States and of the State of Georgia and shall receive a salary of \$59.00 per day for each day of service and such expenses and allowances while performing their duties of office as are refundable to state employees. All expenses incurred by the commission in the performance of its duties shall be paid from funds available to the General Assembly. The commission shall meet no more than 30 days during the year it is established and no more than 15 days in any year thereafter. (Ga. L. 1971, p. 103, § 3; Ga. L. 1988, p. 297, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 124, 125, 278 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 45, 223-225.

45-7-93. Organizational meeting; employment of staff.

The commission shall meet immediately after a majority of its members have taken the oath of office, shall select from the members one of their

number to serve as chairman, and shall adopt such rules and procedures as may be deemed necessary for the expeditious accomplishment of the obligations of the commission. The commission shall be authorized to employ staff personnel as necessary to accomplish commission objectives. (Ga. L. 1971, p. 103, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq.

ALR. — Per diem compensation of public officer, 1 ALR 276.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 8, 9.

45-7-94. Commission to make comparative study of compensation.

The commission shall make a study of the compensation currently being paid by the state to all constitutional state officers, including members of the General Assembly and all full-time heads of state agencies, authorities, boards, bureaus, commissions, committees, and departments whose compensation is set by the Constitution of Georgia, by law, or by an Act of the General Assembly; and the commission shall compare such compensation with that currently being received by officers and employees serving in comparable positions with the federal government, this state, other states, local governments, and in industry, business, and the professions. In making this comparative study, the commission shall utilize all available data pertaining to prevailing market rates and relating to the costs and standards of living of persons in comparable positions. (Ga. L. 1971, p. 103, § 5.)

45-7-95. Commission to file written report of recommended compensation; bill to be introduced into General Assembly; procedure for adoption of bill.

(a) The commission shall file a written report based upon its studies in which a recommended compensation shall be stated for each constitutional state officer, including members of the General Assembly and all full-time heads of state agencies, authorities, boards, bureaus, commissions, committees, and departments whose compensation is set by the Constitution of Georgia, by law, or by Act of the General Assembly. A copy of said report shall be filed with the Governor, Lieutenant Governor, Speaker of the House of Representatives, Clerk of the House of Representatives, Secretary of the Senate, legislative counsel, Chief Justice of the Supreme Court, and Chief Judge of the Court of Appeals. The commission shall file the written report at least 30 days prior to the convening of the General Assembly in regular session at which the general appropriations bill is first considered. The written report of the commission shall be filed, notwithstanding a determination by the commission that no compensation increase or decrease is recommended.

(b) Whenever a written report of the commission's compensation plan is filed, a bill shall be prepared suitable for introduction in either the Senate or House of Representatives containing the compensation recommended by the commission; and such bill shall be introduced at the next session of the General Assembly convening after the filing of said written report. Such bill and the compensation contained therein, in order to become effective, shall receive the same number of readings and go through and be subject to the same procedure as required by the Constitution of Georgia for any other bill; provided, however, that the bill relative to the commission's compensation plan, whether introduced in the House or the Senate, or both, shall be automatically engrossed by both the House and the Senate, and any such bill shall not be changed in either the House or the Senate after its introduction. (Ga. L. 1971, p. 103, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

Authority to make recommendations concerning longevity allowances. — The authority of the State Commission on Compensation to make recommendations concerning compensation extends to the longevity allowances. 1971 Op. Att'y Gen. No. 71-173.1.

Informal recommendation for secretarial

services. — The recommendation to provide allocations for secretarial services to superior court judges is not directly within the statutory authority of the commission, but could be made on an informal basis. 1971 Op. Att'y Gen. No. 71-173.1.

45-7-96. Construction of article.

It is the intention of the General Assembly that this article shall not be construed so as to authorize the commission to reduce the compensation of constitutional state officers below that established by the Constitution of Georgia or so as to deprive the General Assembly of plenary power to enact laws affecting compensation in accordance with the Constitution of Georgia. (Ga. L. 1971, p. 103, § 7.)

ARTICLE 6

TEMPORARY FURLOUGHES

45-7-110. Criteria for order; notice; applicability; effect of other laws; effect on retirement or pension system; repealer.

Repealed by Ga. L. 1991, Ex. Sess., p. 87, § 1, effective March 31, 1993.

Editor's notes. — This Code section was based on Ga. L. 1991, Ex. Sess., p. 87, § 1, and Ga. L. 1993, p. 91, § 45.

CHAPTER 8

ACCOUNTING FOR PUBLIC FUNDS

Sec.		Sec.	
45-8-1.	Definitions.	45-8-13.1.	Depositories using pooled method of securing deposits of public funds; qualifications; rights and responsibilities of director.
45-8-2.	Bonds — Requirement of officers holding state funds; requirement of additional bond or security; declaring office vacant upon failure to give additional security; reduction of bonds; substitution of new bonds.	45-8-14.	Depositories for county and school district moneys.
45-8-3.	Bonds — Requirement of officers holding other than state funds; increase, reduction, or discharge of bonds.	45-8-15.	Deposit of funds in banks or depositories — Lien in favor of public body on bank assets; deposit as trust fund.
45-8-4.	Bonds — Declaring office vacant upon officer's failure to give additional security.	45-8-16.	Deposit of funds in banks or depositories — Deposits showing officer's official title deemed public funds.
45-8-5.	Bonds — Fixing of amount and approval.	45-8-17.	Deposit of funds in banks or depositories — Liability of public authorities or members thereof for official actions.
45-8-6.	Bonds — Liability of new or additional bond for defaults occurring prior to and subsequent to effective date.	45-8-18.	Investment of surplus funds in war bonds or other obligations by treasurer of governmental entity.
45-8-7.	Bonds — Interest against principal and surety upon breach of bond; additional penalty for bad faith; attorneys' fees.	45-8-19.	Jurisdiction to cite defaulting officers, depositories, sureties, for accounting and to issue execution.
45-8-8.	Bonds — When principal and surety not liable.	45-8-20.	Citation of officer, bank, or depository to show cause; service of notice.
45-8-9.	Bonds — Limitation of actions on bonds.	45-8-21.	Right of interested citizen, taxpayer, or public body to appear at hearing.
45-8-10.	Deposit of funds in banks or depositories — Requirement generally.	45-8-22.	Cited official, bank, or depository to file statement of accounts; preparation of statement by citing official or authority; entry of judgment or order in nature of judgment; settling accounts.
45-8-11.	Deposit of funds in banks or depositories — Authority of officers holding public funds to determine amounts to be deposited; waiver of requirement for depository to give security.	45-8-23.	Authority to issue subpoenas; punishment for contempt for refusal to obey.
45-8-12.	Deposit of funds in banks or depositories — Depository to give bond; pledge of securities in lieu of bond; acceptance of federal insurance as security; combination of securities; aggregate amount of bond.	45-8-24.	Joinder of parties in proceedings for accounting; power of authorities to determine liability.
45-8-13.	Deposit of funds in banks or depositories — Deposit of securities by banks or depositories; contract as to interest or compensation.	45-8-25.	Issuance of execution against defaulting officer, bank, depository, or surety; enforcement; proceed-

Sec.		Sec.	
	ings to arrest enforcement; burden of proof at trial; parties; effect of admission of correctness by defendant in execution.		assets by bank to innocent purchaser for value.
45-8-26.	Action by bond obligee before citation or execution.	45-8-30.	Release of property of county officers from state lien — Authorization.
45-8-27.	Procedure for accounting where officer succeeds himself.	45-8-31.	Release of property of county officers from state lien — Procedure generally.
45-8-28.	Personal representative of insane or deceased officer as party to proceedings.	45-8-32.	Release of property of county officers from state lien — Proposed sale or loan to be consummated within 60 days from authorization of release.
45-8-29.	Effect of judgment or execution as lien; transfer of judgment or execution; enforcement by transferee; effect of sale or transfer of	45-8-33.	Effect of chapter upon liability of officers to private persons.

Cross references. — Submission by judges of probate court, county treasurers, etc., of returns stating amount of money belonging

to county, and as to grand jury examination of such returns, § 36-1-7. Disaster Volunteer Leave Act, § 38-3-90 et seq.

RESEARCH REFERENCES

ALR. — Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control, 104 ALR 623.

Statutes relating to embezzlement or

other offense in respect of public money with safekeeping of which a public officer is charged, as applicable to employee or subordinate, 144 ALR 590.

45-8-1. Definitions.

As used in this chapter, the term:

(1) “Collecting officer” means any person who is either generally or specifically elected, appointed, or employed, in whole or in part, to collect any tax, revenue, or other moneys on behalf of the state or any of its political subdivisions or on behalf of any board, commission, bureau, or department thereof. The term shall not mean any state, municipality, or county tax collector or revenue agent pursuant to Title 48.

(2) “County authority” means the judge of the probate court or the board of county commissioners or other tribunal, body, or officer having jurisdiction over the fiscal affairs of the county.

(3) “Custodian” means the director of the Office of Treasury and Fiscal Services or any bank, savings association, or trust company that:

(A) Is organized and existing under the laws of this state, any other state, or the United States;

(B) Has executed all forms required under this chapter or any rule adopted under this chapter;

(C) Agrees to be subject to the jurisdiction of the courts of this state or of courts of the United States which are located within this state for the purpose of any litigation arising out of this chapter; and

(D) Has been approved by the director to act as a custodian;

and which holds a pool of collateral for public deposits established by a depository pursuant to Code Section 45-8-13.

(4) "Daily pool balance" means the daily balance of deposits of public funds held by a depository which balance is secured by the pooled method as specified in paragraph (2) of subsection (b) of Code Section 45-8-13. Insured deposits and deposits of public funds for which no collateral is required under subsection (b) or (d) of Code Section 45-8-12 or special deposits and operating funds for which collateral has been duly waived pursuant to subsection (b) of Code Section 45-8-11 or paragraph (3) of Code Section 50-17-53 shall be excluded from the balance of deposits of public funds for purposes of determining the daily pool balance.

(5) "Default" includes, without limitation, the failure or refusal of a public depository to pay any check or warrant drawn upon sufficient and collected funds by any public depositor or to return any deposit on demand or at maturity together with interest as agreed; the issuance of an order by any supervisory authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

(6) "Depository" means any bank designated, named, or appointed from time to time:

(A) By the State Depository Board as qualified to serve as a depository of state funds pursuant to Code Section 50-17-50;

(B) By county authorities or others as depositories for county and other public funds pursuant to Code Section 45-8-14; or

(C) By collecting officers and officers holding public funds as a depository for public funds pursuant to Code Section 45-8-11.

(7) "Director" means the director of the Office of Treasury and Fiscal Services.

(8) "Officer to hold public funds" means not only the director of the Office of Treasury and Fiscal Services, municipality or county treasurers, the State School Superintendent, municipality or county school superintendents, and treasurers of school districts, but also every other person, by whatever name or title called, who shall be either generally or specially elected, appointed, or employed with the duty, in whole or in part, to receive, hold, or disburse any public money or revenue on behalf of the

state or any of its political subdivisions or on behalf of any board, commission, bureau, or department.

(9) “Proper authority” means the officer, board, commission, or other tribunal or body having the jurisdiction to act in the particular matter.

(10) “Public body” means not only the state, municipalities, counties, school districts, drainage districts, and other districts created for special purposes, but also every other political subdivision of the state and every board, bureau, commission, and department of the state or any subdivision thereof, as the context may require.

(11) “State authority” means the officer or officers or board, bureau, commission, or other person or persons who, in their official capacity, shall have, according to the laws of this state, the duty or jurisdiction to act on behalf of the state in the particular matter. (Ga. L. 1933, p. 78, § 2; Code 1933, § 89-801; Ga. L. 1993, p. 1402, § 18; Ga. L. 1997, p. 868, § 1.)

JUDICIAL DECISIONS

Ordinary as officer included in definitions. — The ordinary (now probate judge) is a “collecting officer” for the county within the meaning of O.C.G.A. § 45-8-1 when the ordinary collects fees for marriage licenses. The ordinary is an “officer to hold public funds” for the county within the meaning of O.C.G.A. § 45-8-1 when the ordinary holds 20 percent of the fees collected separately from the remainder of the fees and when the ordinary disburses to the Probate Courts Retirement Fund, in behalf of the county, the 20 percent withheld. *Holcombe v. Gunby*, 241 Ga. 105, 243 S.E.2d 65 (1978).

45-8-2. Bonds — Requirement of officers holding state funds; requirement of additional bond or security; declaring office vacant upon failure to give additional security; reduction of bonds; substitution of new bonds.

(a) The state authorities shall require all collecting officers and all officers to hold public funds, so far as relates to moneys or revenues of the state, to give bond, on or before entering on the duties of their office, appointment, or employment, with good security for the faithful performance of the duties of their office and faithfully to account for all moneys coming into their hands, together with such other conditions as the laws may require as to the official bond of the particular officer in question.

(b) If the state authority having supervision or control over the officer or the conduct of his office shall deem at any time that the bond given by such officer is insufficient in amount or is inadequate as to security, he shall notify such officer to give an additional bond or to increase the security. If within the time required by such state authority the officer fails to give the additional bond or to make adequate the security, the state authority shall, if the same be an office the incumbent of which such state authority has the jurisdiction or power to remove, declare the office vacant. If it is an office the incumbent of which such state authority does not have the power to

remove, the state authority shall report the same to the Governor; and thereupon, if it be an office the incumbent of which the Governor has power to remove for cause, the Governor, after giving such officer opportunity to be heard, shall have the power to declare the office vacant. If it relates to an officer who can be removed only by impeachment proceedings, the Governor shall report the same to the General Assembly. The Governor shall have concurrent jurisdiction with all other proper authorities to require any collecting officer or any officer to hold public funds to give additional bond or security.

(c) The Governor or other proper state authority shall have the jurisdiction and authority to allow any collecting officer or any officer to hold public funds of the state to reduce his bond by an order discharging the existing bonds of such officer from future liability and the giving of a new bond by said officer in the reduced amount which shall not be below the amount required of such officer as a minimum by the laws of this state.

(d) The Governor or other proper state authority shall have the jurisdiction and authority to allow any such officer to substitute a new bond for his existing bond or bonds and to discharge the existing bond or bonds as to future liability by an order to that effect. (Ga. L. 1933, p. 78, § 3; Code 1933, § 89-806.)

Cross references. — Giving of bonds by public officers generally, Ch. 4, T. 45.

JUDICIAL DECISIONS

Cited in Employers Liab. Assurance Corp.
v. Lewis, 101 Ga. App. 802, 115 S.E.2d 387
(1960).

OPINIONS OF THE ATTORNEY GENERAL

Liability of employee for failure to account. — A default by an employee in the employee's obligation to account for the funds advanced to the employee for the purposes stated in O.C.G.A. § 45-7-25 is a failure "faithfully to account for all moneys coming into (his) hands," and thus is a claim cognizable under the bond required by O.C.G.A. §§ 45-8-8 and 45-8-2; in the event the employee is not bonded as required by O.C.G.A. § 45-8-2, then the limitation of liability with respect to the principal and surety on the bond of the head of

that state department contained in O.C.G.A. § 45-8-8 is no longer applicable and the historical rules of liability would in that event apply to the department head and surety. 1973 Op. Att'y Gen. No. 73-87.

Requiring additional bond from school superintendent. — A county board of education may require a county school superintendent to give an additional bond or to increase the security if in the opinion of the said board the present bond is insufficient in amount or is inadequate as to security. 1957 Op. Att'y Gen. p. 105.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 351, 352.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 282.

45-8-3. Bonds — Requirement of officers holding other than state funds; increase, reduction, or discharge of bonds.

All municipality or county authorities and all other proper authorities shall, as to collecting officers and officers to hold public funds other than those dealt with in Code Section 45-8-2, have the jurisdiction and authority to require bonds of such officers, of the same kind as is prescribed in Code Section 45-8-2, and shall have the same power and authority to require such officers to increase their bonds or the security thereon, to permit the reduction of such bonds, and to give discharge to existing bonds as to future liability upon new bonds being given, all in like manner as is set forth in Code Section 45-8-2. (Ga. L. 1933, p. 78, § 3a; Code 1933, § 89-807.)

OPINIONS OF THE ATTORNEY GENERAL

Requiring additional bond from school superintendent. — A county board of education may require a county school superintendent to give an additional bond or to

increase the security if in the opinion of the said board the present bond is insufficient in amount or is inadequate as to security. 1957 Op. Att'y Gen. p. 105.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 351, 352.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 282.

45-8-4. Bonds — Declaring office vacant upon officer's failure to give additional security.

If any such officer is required to give additional bond or security pursuant to Code Section 45-8-3 and fails to do so within the time required, the proper authority shall:

(1) Declare the office vacant, if such proper authority has the power of removal over such office; or

(2) If such proper authority does not have the power of removal, it shall report the same to the Governor or officer having power of removal, who, after giving the delinquent officer opportunity to be heard, shall have the power to declare the office vacant. (Ga. L. 1933, p. 78, § 4; Code 1933, § 89-808.)

OPINIONS OF THE ATTORNEY GENERAL

Requiring additional bond from school superintendent. — A county board of edu-

cation may require a county school superintendent to give an additional bond or to

increase the security if in the opinion of the said board the present bond is insufficient in amount or is inadequate as to security. 1957 Op. Att’y Gen. p. 105.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130. C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 45, 282.

45-8-5. Bonds — Fixing of amount and approval.

The amount of the bonds of collecting officers and officers to hold public funds shall be in the amount fixed by the proper authority, unless the amount is fixed by existing general laws, and shall be approved by the proper authority and filed as required by law. Except as otherwise provided in this Code section, the proper authority to fix the amount of bonds and to approve the same is the officer or officers upon whom those duties are imposed by existing laws. Where the law does not designate what officer shall perform these duties, the proper authority shall be the officer, board, bureau, or commission having supervision over the particular office or officer. Municipality or county authorities shall be deemed the proper authorities as to fixing the amount and approving bonds of municipality or county treasurers and those acting as substitutes for municipality or county treasurers under local laws and as to all other collecting officers and officers holding public funds, so far as relates to municipality or county taxes or revenue, and shall be deemed the proper authority as to requiring additional bonds or strengthening security on bonds, as to allowing reduction or substitution of bonds, and as to discharging bonds from future liability, so far as relates to such officers. (Ga. L. 1933, p. 78, § 5; Code 1933, § 89-809.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 136. C.J.S. — 67 C.J.S., Officers and Public Employees, § 283.

45-8-6. Bonds — Liability of new or additional bond for defaults occurring prior to and subsequent to effective date.

Where any collecting officer, officer to hold public funds, bank, or depository gives an additional bond or adds new security during his term, the bond in force at the time and securities thereon shall be liable for defaults occurring prior to the time the additional bond or security is given; and the existing bond or security and the additional bond or security shall be jointly, severally, and concurrently liable for subsequent defaults. If the order requiring a new bond so provides, the sureties on the old bond or bonds shall be discharged from future liability and the new bond alone shall

be liable therefor. However, if the new bond so provides, it may assume concurrent liability with the old bond as to defaults occurring prior to the date of its being given, or, if the officer having the duty of approving the bond so consents, the new bond may assume sole liability from a date prior to the time of its being filed and the old bond or bonds may be discharged from liability from the date as of which such new bond is operative. (Ga. L. 1933, p. 78, § 14; Code 1933, § 89-835.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 130, 359.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 294.

45-8-7. Bonds — Interest against principal and surety upon breach of bond; additional penalty for bad faith; attorneys' fees.

Upon breaches of the bond of any officer, bank, or depository, interest shall run against the principal on the bond at the rate of 7 percent per annum from the date of the breach and against the surety at the same rate from the date of the demand on the surety. If the breach shall involve dishonesty on the part of the officer or bank, the official or county authority having jurisdiction to cite the officer, or any court acquiring jurisdiction over the subject matter, may, as against the offending principal in the bond, impose an additional penalty of not more than 10 percent of the amount of the loss and a reasonable sum for attorneys' fees. This penalty and award of attorneys' fees may also be imposed upon the surety by any court acquiring jurisdiction of the subject matter, in the event it is shown that the surety has acted in bad faith and has been vexatiously litigious or that it has filed defensive proceedings for delay only. Existing laws imposing higher rates of interest or penalties upon principals or sureties upon any of such bonds are superseded by this Code section. (Ga. L. 1933, p. 78, § 12; Code 1933, § 89-833.)

JUDICIAL DECISIONS

O.C.G.A. § 45-8-7 requires a demand on the surety to initiate the running of interest against it but does not prescribe a specific form of demand. In the absence of specific statutory or contractual requirement it is only necessary to constitute a demand that the surety be notified that immediate payment of the debt is requested. There is no requirement here of demand on the principal to initiate the running of interest against the principal, and the evident purpose of the statutory requirement of demand on the surety is to give such surety an opportunity to immediately reimburse the county for any

loss within the terms of the bond occasioned by the breach of principal, without subjecting it to the payment of interest prior to the time the county notifies it that immediate payment of such obligation is requested. *Employers Liab. Assurance Corp. v. Lewis*, 101 Ga. App. 802, 115 S.E.2d 387 (1960).

No interest may be charged for period preceding demand. — Where there was no evidence in the record of any demand upon the surety of the tax commissioner prior to the date of the execution, an execution against the surety could not properly be issued for interest alleged to have accrued

prior to the date thereof. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

Recordation of execution insufficient as demand. — Simply issuing the execution and recording it on the execution docket was not sufficient to constitute the demand on the surety which O.C.G.A. § 45-8-7 re-

quires. *Employers Liab. Assurance Corp. v. Lewis*, 101 Ga. App. 802, 115 S.E.2d 387 (1960).

Cited in *Rice v. Board of Comm'rs of Rds. & Revenue*, 107 Ga. App. 207, 129 S.E.2d 401 (1963).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 354 et seq., §§ 493, 494.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 282, 285.

45-8-8. Bonds — When principal and surety not liable.

(a) Neither the principal nor the surety on any bond of any collecting officer or any officer to hold public funds shall be liable for the failure of such officer to account for any public money coming into his hands which he shall have deposited in any designated depository or, if the proper authority shall have failed to designate a depository, in any bank selected by him, if it was deposited in the name of the public body to which it belongs, in his own name in his official title or with his official capacity disclosed, or if the bank receiving the same shall otherwise have notice of the public nature of the deposit, provided that said failure to account is attributable solely to the failure or insolvency of such depository.

(b) Neither the principal nor the surety on the bond of the head of any state department or agency shall be liable for the failure of an employee of any such department or agency to account for any public money coming into the hands of such employee, if such employee is bonded in an amount deemed adequate by the head of the department or agency and the state auditor and the bond complies with this chapter. (Ga. L. 1933, p. 78, § 13; Ga. L. 1964, p. 282, § 1.)

JUDICIAL DECISIONS

Bond relieved when public funds deposited officially. — A county treasurer is required to deposit the county money in a bank and to have it give bond to secure the deposit, and, if it is deposited officially or if the bank knows it to be a public deposit, the

treasurer's bond is thereby relieved. *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933).

Cited in *Landrum v. Thomas*, 52 Ga. App. 257, 183 S.E. 140 (1935); *Weems v. Glenn*, 199 Ga. App. 388, 34 S.E.2d 511 (1945).

OPINIONS OF THE ATTORNEY GENERAL

Limitation on liability of principal and surety inapplicable where principal not bonded. — A default by an employee in obligation to account for the funds advanced to the employee for the purposes stated in

O.C.G.A. § 45-7-25 is a failure "faithfully to account for all moneys coming into (his) hands," and thus is a claim cognizable under the bond required by O.C.G.A. §§ 45-8-2 and 45-8-8; in the event the employee is not

bonded as required by O.C.G.A. § 45-8-2, then the limitation of liability with respect to the principal and surety on the bond of the head of that state department contained in

O.C.G.A. § 45-8-8 is no longer applicable and the historical rules of liability would in that event apply to the department head and surety. 1973 Op. Att'y Gen. No. 73-87.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 351 et seq., § 363, et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 282-308.

ALR. — Liability of public officer or his bond for loss of public funds due to insol-

vency of bank in which they were deposited, 93 ALR 819; 155 ALR 436.

Constitutionality of statutes relieving officer or public depository, or his surety, from liability for loss of public funds, 96 ALR 295.

45-8-9. Bonds — Limitation of actions on bonds.

No action on the bond of any collecting officer, officer to hold public funds, bank, or depository shall be maintained unless the action or proceeding is begun within six years from the date the alleged cause of action accrued; nor shall any action be maintained against any surety because of an alleged breach of the bond, unless, within three years from the date the alleged cause of action accrues, an action is begun against the surety or a citation is issued against the surety by the official, municipality, or county authority having jurisdiction to cite or an execution is issued against the surety as provided for in Code Section 45-8-25. (Ga. L. 1933, p. 78, § 11; Code 1933, § 89-832.)

JUDICIAL DECISIONS

Statute of limitations begins to run from time of breach of duty. — The cause of action had its inception and the statute of limitations began to run from the time there was a breach of duty on the part of the Tax Commissioner (now State Revenue Commissioner). *Employers Liab. Assurance Corp. v. Lewis*, 101 Ga. App. 802, 115 S.E.2d 387 (1960).

A surety has the right to plead the statute as a bar to recovery. — Under O.C.G.A. § 45-8-9, a surety on an officer's bond had the right to plead, as a reason why an execution should not proceed against it, that the cause of action accrued more than three years before the date of such execution. *Bibb County v. Winslett*, 191 Ga. 860, 14 S.E.2d 108 (1941).

The surety is not liable on untimely claims. — Where the Tax Commissioner (now State

Revenue Commissioner) had not filed a report or made an accounting for 1953 taxes on or before April 20, 1954, and it is apparent that the commissioner's failures constituted a breach of the official duty for which the commissioner and the surety on the commissioner's official bond would both be liable, a cause of action in this matter accrued on April 20, 1954, and the execution issued on May 21, 1957, was barred by the statute of limitations to the extent that it sought to enforce liability against the surety for amounts withheld for 1953. *Employers Liab. Assurance Corp. v. Lewis*, 101 Ga. App. 802, 115 S.E.2d 387 (1960).

Cited in *Laurens County v. Keen*, 214 Ga. 32, 102 S.E.2d 697 (1958); *Holcombe v. Gunby*, 241 Ga. 105, 243 S.E.2d 65 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 455 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 302.

45-8-10. Deposit of funds in banks or depositories — Requirement generally.

All funds belonging to the state or to any of its bureaus, commissions, boards, or departments shall be deposited in designated state depositories. Every collecting officer and every officer to hold public funds who receives any money belonging to any public body shall promptly deposit the money in a designated state depository. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-810.)

Cross references. — State depositories, § 50-17-50 et seq.

JUDICIAL DECISIONS

Bond relieved when public funds deposited officially. — A county treasurer is required to deposit the county money in a bank and to have it give bond to secure the deposit, and, if it is deposited officially or if the bank knows it to be a public deposit, the

treasurer's bond is thereby relieved. *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933).

Cited in *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937); *Harrison v. May*, 228 Ga. 684, 187 S.E.2d 673 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Deposit of funds exceeding insured amount. — The collecting officer or officer holding the funds of a hospital authority may deposit funds of the authority in a local bank or banks notwithstanding the fact that the amount of the funds so deposited may exceed Federal Deposit Insurance Corporation insurance on the account, if the authority requires the depository to give bond or

make deposit of securities in trust to secure such deposits, pursuant to O.C.G.A. §§ 45-8-13 and 45-8-10. 1969 Op. Att'y Gen. No. 69-500.

A credit union is not a proper depository for public funds belonging to or in the custody of a municipal corporation inasmuch as a credit union is not a bank. 1974 Op. Att'y Gen. No. 74-41.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263, 345, 348.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 288.

45-8-11. Deposit of funds in banks or depositories — Authority of officers holding public funds to determine amounts to be deposited; waiver of requirement for depository to give security.

(a) Every collecting officer and officer holding public funds shall be authorized to determine, from time to time, in respect to all public funds held by such officer, any and all of the following:

(1) The maximum amount of public money which may be deposited in a particular depository;

(2) The maximum and minimum proportion of public funds which may be maintained in a particular depository; and

(3) The amount of public funds to be deposited in particular depositories as time deposits and the periods of such deposits.

(b) All depositories shall give security for deposits of public funds. However, a collecting officer or officer holding public funds may, in his discretion, waive the requirement for security in the case of operating funds placed in demand deposit checking accounts.

(c) This Code section shall not apply to collecting officers and officers holding public funds pursuant to Article 3 of Chapter 17 of Title 50, relating to state depositories. (Code 1933, § 89-810.2, enacted by Ga. L. 1980, p. 969, § 1.)

45-8-12. Deposit of funds in banks or depositories — Depository to give bond; pledge of securities in lieu of bond; acceptance of federal insurance as security; combination of securities; aggregate amount of bond.

(a) The collecting officer or officer holding public funds may not have on deposit at any one time in any depository for a time longer than ten days a sum of money belonging to the public body when such depository has not given a bond to the public body as set forth in this Code section. The bond to be given by depositories, where such bonds are required, shall be a surety bond signed by a surety company duly qualified and authorized to transact business within this state in a sum as so required. In lieu of such a surety bond, the depository may pledge to the public body as security any one or more of the obligations enumerated in Code Section 50-17-59, relating to the bond required to secure state deposits and securities in lieu of bond.

(b) The collecting officer or officer holding public funds shall accept the guarantee or insurance of accounts of the Federal Deposit Insurance Corporation and the guarantee or insurance of accounts of the Federal Savings and Loan Insurance Corporation to secure public funds on deposit in depositories to the extent authorized by federal law governing the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation.

(c) A depository may secure deposits made with it partly by surety bond, partly by deposit of any one or more of the obligations referred to in subsection (a) of this Code section, partly by the guarantee or insurance referred to in subsection (b) of this Code section, or by any combination of these methods. The aggregate of the face value of such surety bond and the market value of securities pledged shall be equal to not less than 110

percent of the public funds being secured after the deduction of the amount of deposit insurance.

(d) Notwithstanding any other provisions of this Code section, a depository may deduct the face amount of direct loans from deposits of a public body before being required to secure such deposits by a surety bond, deposit insurance, securities, or any combination thereof.

(e) This Code section shall not apply to collecting officers and officers holding public funds pursuant to Article 3 of Chapter 17 of Title 50, relating to state depositories. (Code 1933, § 89-810.2, enacted by Ga. L. 1980, p. 969, § 1; Ga. L. 1987, p. 905, § 1; Ga. L. 1987, p. 1334, § 1; Ga. L. 1994, p. 499, § 1.)

45-8-13. Deposit of funds in banks or depositories — Deposit of securities by banks or depositories; contract as to interest or compensation.

(a) Any depository in this state is authorized to give such bond or to secure deposits of public funds by deposits of securities, whether the securities are owned by the depository into which the public funds are deposited or are owned by another bank, and the proper authorities are authorized to make contracts with depositories as to interest or compensation of the depository.

(b) Depositories may secure deposits of public funds using the dedicated method or the pooled method as enumerated in this subsection:

(1) Under the dedicated method, a depository shall secure the deposits of each of its public depositors separately. It is intended that the dedicated method is the method permitted under Code Section 45-8-12 and that this method will not be affected by this subsection; or

(2) Under the pooled method, a depository shall secure deposits of public funds of public bodies which have deposits with it through a pool of collateral established by the depository with a custodian for the benefit of public bodies having deposits with such depository as set forth in Code Section 45-8-13.1. If a depository elects the pooled method, it may use the pooled method with some public depositors and the dedicated method with other public depositors.

(c) No depository shall be required to use the pooled method. However, any depository that offers the pooled method shall also offer the dedicated method. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-812; Ga. L. 1993, p. 929, § 3; Ga. L. 1994, p. 97, § 45; Ga. L. 1997, p. 868, § 2.)

JUDICIAL DECISIONS

Bond relieved when public funds deposited officially. — A county treasurer is required to deposit the county money in a bank and to have it give bond to secure the deposit, and, if it is deposited officially or if the bank knows it to be a public deposit, his

bond is thereby relieved. *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933).

Cited in *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937).

OPINIONS OF THE ATTORNEY GENERAL

The funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of O.C.G.A. § 45-8-15 and this section. 1957 Op. Att'y Gen. p. 7.

Requirements when amount deposited exceeds amount insured. — The collecting officer or officer holding the funds of a hospital authority may deposit funds of the authority in a local bank or banks notwithstanding the fact that the amount of the funds so deposited may exceed Federal Deposit Insurance Corporation insurance on the account, if the authority requires the depository to give bond or make deposit of securities in trust to secure such deposits pursuant to O.C.G.A. §§ 45-8-10 and 45-8-13. 1969 Op. Att'y Gen. No. 69-500.

Banks holding public moneys are required to secure same by giving bond or depositing securities in trust whether or not specifically

requested to do so by public authorities. 1962 Op. Att'y Gen. p. 24.

Approved securities are the same whether the funds are state or local. — Since the policy of protecting public funds is presumably the same whether the funds are state funds or subdivision funds, the list in O.C.G.A. § 50-17-59(a) should govern for purposes of O.C.G.A. § 45-8-13. 1979 Op. Att'y Gen. No. 79-12.

Obligations of a public housing authority are approved securities. — A state bank may purchase obligations of a public housing agency and pledge them as security for the repayment of a deposit of funds made with the bank by the housing agency provided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Op. Att'y Gen. p. 7.

45-8-13.1. Depositories using pooled method of securing deposits of public funds; qualifications; rights and responsibilities of director.

(a) Only depositories which have met the qualifications imposed by this Code section may use the pooled method. If a depository elects the pooled method, it shall notify the director in writing of its desire to utilize the pooled method and the proposed effective date thereof and provide to the director executed copies of the custodial agreement, resolution, and other agreements and data as may be required by the director. Upon meeting the qualifications of this Code section, the director shall issue a certificate of qualification, and such bank or trust company shall become a depository permitted to use the pooled method.

(b) The aggregate of the market value of the securities pledged to secure a pool of public funds shall be not less than 110 percent of the daily pool balance.

(c)(1) A depository may not retain any deposit of public funds which is required to be secured unless, within ten days thereafter or such shorter period as has been agreed upon by the depository and the public depositors secured by the pool, it has deposited for the benefit of the pool eligible collateral equal to its required collateral pursuant to this Code section.

(2) For reporting purposes, each depository using the pooled method shall determine the market value of its collateral. Each depository shall provide such monthly reports to the director as the director shall require.

(3) A depository may not substitute or withdraw collateral previously pledged as part of a pool without the prior approval of the director. The director shall grant such approval if:

(A) In the case of substitution of collateral, the market value of the substituted collateral is equal to or greater than the market value of the collateral withdrawn; and

(B) In the case of withdrawal of collateral:

(i) The depository certifies in writing that such withdrawal will not reduce its collateral below its required collateral; and

(ii) This certification is substantiated by a statement of the depository's current daily pool balance that indicates that after withdrawal such deposits will continue to be secured to the full extent required by law.

(d) The director shall be authorized to delegate to any bank, savings association, trust company, or other qualified firm, corporation, or association which is authorized to transact business in the State of Georgia such of its rights and responsibilities with respect to the pooled method as the director deems appropriate including, without limitation, the right to approve or disapprove any substitutions or withdrawals permitted under this Code section. Fees and expenses of the bank, savings association, trust company, or other qualified firm, corporation, or association to which the director delegates its rights and responsibilities under this subsection shall be paid by the depositories using the pooled method.

(e) The director, upon a default by a depository using the pooled method, shall request immediate delivery of such part of the pooled, pledged collateral as may be needed to hold the director or any public depositor harmless from losses incurred by the default. The director shall have full discretion as to the amounts and securities to be delivered. The director shall sell as much of the collateral as is needed to provide cash to cover the amount of the default and expenses resulting therefrom. From the proceeds of the sale of such collateral, the director shall pay any amounts owing to public depositors who participated in the pooled fund of the defaulting depository. Public depositors whose deposits are secured by a pledging pool of a defaulting depository shall look solely to the assets of such pledging pool and to the assets of the defaulting depository and shall have no claim, ex contractu or otherwise, against the state, other depositories, or the assets of pledging pools created by other depositories.

(f) In addition to all of the rights provided to the director in this chapter, the director shall have the following powers:

(1) To adopt such rules and prescribe such forms as may be necessary to accomplish the purposes of this chapter;

(2) To decline, accept, or reduce the reported value of collateral, as circumstances may require, in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this chapter;

(3) To suspend or disqualify any custodian or depository that has violated any provision of this chapter or any rule adopted pursuant to this chapter;

(4) To require depositories to furnish detailed monthly reports of public deposits held by depositors' names, addresses, amounts, and any additional information requested by the director;

(5) To confirm deposits of public funds to the extent possible under current law; and

(6) To monitor and confirm as often as deemed necessary by the director the pledged collateral held by third-party custodians.

(g) Neither the provisions of this chapter nor the exercise of any right or duty by the director authorized or permitted by Code Section 45-8-13 or this Code section shall be construed as a waiver of sovereign immunity. (Code 1981, § 45-8-13.1, enacted by Ga. L. 1997, p. 868, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "chapter" was substituted for "Act" in subsection (g).

Pursuant to Code Section 28-9-5, in 1998, "this Code section" was substituted for "45-8-13.1" in subsection (g).

45-8-14. Depositories for county and school district moneys.

The governing authority of each county shall designate one or more solvent banks, insured federal savings and loan associations, or insured state chartered building and loan associations as depositories of all county moneys. The board of education of each county school district and of each independent school district shall designate one or more solvent banks, insured federal savings and loan associations, or insured state chartered building and loan associations as depositories of all school district moneys. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-811; Ga. L. 1975, p. 696, § 1; Ga. L. 1994, p. 412, § 1.)

JUDICIAL DECISIONS

Cited in *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933); *Whipple v.*

American Sur. Co., 92 F.2d 673 (5th Cir. 1937).

OPINIONS OF THE ATTORNEY GENERAL

Right to specify depository for school funds. — County commissioners do have the legal right to specify the bank to be used as

a depository for school funds. 1965-66 Op. Att'y Gen. No. 65-15.

Exercise of right by those other than

county authorities. — The statutory authority of the governing authorities of a county to designate the depository to be used by the county board of education applies to all school funds under the jurisdiction and control of the school board; the county board of education and other specified persons in O.C.G.A. § 45-8-14 may designate such a depository only when the county authorities fail to designate a depository. 1967 Op. Att’y Gen. No. 67-103.

Transfer of school funds where depository redesignated. — Where a depository

has been selected by the school board due to failure of the county authorities to act, and the county authorities at some later date then do decide to specify a depository for the school fund, the county school board should, if an immediate transfer would for some reason interfere with school operations, be given a reasonable time to transfer such funds, so as not to interfere with education in the county. 1965-66 Op. Att’y Gen. No. 65-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 348.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 288.

45-8-15. Deposit of funds in banks or depositories — Lien in favor of public body on bank assets; deposit as trust fund.

Upon any deposit of public funds being made in any bank, whether designated as a depository or not, there shall arise in favor of the public body to which such fund belongs a lien on all the assets of said bank, superior to all other liens, for the amount of such funds. Upon being deposited in any bank, all funds of any public body shall be deemed to be held as a trust fund. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-813.)

JUDICIAL DECISIONS

“Any bank”. — The language “any bank” in O.C.G.A. § 45-8-15 includes a private as well as a regularly chartered bank. *State v. Parramore*, 214 Ga. 578, 106 S.E.2d 1 (1958).

Property not constituting asset of bank. — Property, title to which has been conveyed by the bank to secure debts incurred in the regular course of the bank’s business, is not an asset of the bank under the meaning of O.C.G.A. § 45-8-15. *State v. Parramore*, 214 Ga. 578, 106 S.E.2d 1 (1958).

Fund collected by state agent as superior lien. — Where the claim of the state was not

for “debts due for taxes, state and federal,” but was based upon a fund collected by the state through its automobile tag agent and deposited in a private bank under the name of the tag agent, the state occupied the position of “debts due depositors” with “a lien on all the assets of said bank, superior to all other liens, for amount of such funds.” *State v. Parramore*, 214 Ga. 578, 106 S.E.2d 1 (1958).

Cited in *Hancock County v. Hancock Nat’l Bank*, 67 F.2d 421 (5th Cir. 1933); *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937).

OPINIONS OF THE ATTORNEY GENERAL

The funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of

§ 45-8-13 and O.C.G.A. § 45-8-15. 1957 Op. Att’y Gen. p. 7.

Purchase of obligations of public housing

agency by depository bank. — A state bank may purchase obligations of a public housing agency and pledge them as security for the repayment of a deposit of funds made with the bank by the housing agency pro-

vided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Op. Att'y Gen. p. 7.

45-8-16. Deposit of funds in banks or depositories — Deposits showing officer's official title deemed public funds.

Money of any public body deposited in any bank by any collecting officer or officer to hold public funds, though deposited in his own name, shall, if the account stands in his name in his official capacity or is marked with words or abbreviations showing his official title or if the bank otherwise knows that it is public money, be deemed to be funds of a public body within the scope of this chapter. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-814.)

JUDICIAL DECISIONS

Bond relieved when county funds deposited officially. — A county treasurer is required to deposit the county money in a bank and to have it give bond to secure the deposit, and, if it is deposited officially or if the bank knows it to be a public deposit, the

treasurer's bond is thereby relieved. *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933).

Cited in *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937).

45-8-17. Deposit of funds in banks or depositories — Liability of public authorities or members thereof for official actions.

No proper authority, including the director, nor any member of a board or tribunal constituting such a proper authority shall, where acting in good faith, incur any liability by reason of designating any depository, permitting deposits of public funds to be collateralized by the direct method or the pooled method, administering or regulating the pooled method, or taking any other official action required of such proper authority under this chapter. (Ga. L. 1933, p. 78, § 6; Code 1933, § 89-815; Ga. L. 1997, p. 868, § 4.)

JUDICIAL DECISIONS

Cited in *Hancock County v. Hancock Nat'l Bank*, 67 F.2d 421 (5th Cir. 1933); *Whipple v.*

American Sur. Co., 92 F.2d 673 (5th Cir. 1937).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 345 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 213.

ALR. — Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 93 ALR 819; 155 ALR 436.

45-8-18. Investment of surplus funds in war bonds or other obligations by treasurer of governmental entity.

(a) The treasurer of any municipality or county or board of trustees of any independent school district may invest any surplus funds in his hands, or any special funds held or being accumulated for any special purpose, or any funds on hand not required for the operation of the municipality, county, or school district for the current fiscal year. He may invest such funds in war bonds or other valid obligations of the United States government, repayable at face value or better, when such investment is authorized by the mayor and general council, county commission, judge of the probate court, board of trustees, or other authority in charge of the affairs of said municipality, county, or independent school district, provided funds accumulated for any special purpose shall be invested only in securities whose maturity date is prior to the date when such funds shall be needed for said special purposes or which are redeemable prior thereto without penalty or loss of principal.

(b) Any bonds or other securities purchased or held pursuant to subsection (a) of this Code section shall be held subject to the same conditions as those attached to the funds from which same were purchased. (Ga. L. 1943, p. 453, §§ 1, 2.)

Law reviews. — For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Investment of funds granted to municipalities. — The General Assembly intended the funds granted to the municipalities to be special funds and did not intend to restrict them so as to prohibit their temporary investment so long as the investment does not interfere in any way with the expedient use of the funds for the purpose provided in the Act, and the maturity date of the government obligations does not extend beyond the date when such funds shall be needed for these purposes. 1965-66 Op. Att’y Gen. No. 65-35.

The use of the word “bonds” as used in O.C.G.A. § 45-8-18 should be construed to include the obligation to repay the principal as well as the obligation to pay any interest or premium; any interest earned by the investment of the funds granted to the municipalities by the state are subject to the same conditions as those attached to the funds from which the bonds were purchased. 1965-66 Op. Att’y Gen. No. 65-35.

RESEARCH REFERENCES

ALR. — Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 ALR 1341.

45-8-19. Jurisdiction to cite defaulting officers, depositories, sureties, for accounting and to issue execution.

Jurisdiction to cite defaulting collecting officers, officers to hold public funds, depositories, or the sureties on their bonds for an accounting and to issue executions against them is conferred and vested as follows:

(1) As to state officials and their sureties, assistants, and employees of any state office and their sureties, and depositories of the funds of the state or any of its bureaus, commissions, boards, or departments, and their sureties, in the Governor;

(2) As to other collecting officers and officers to hold public funds, so far as relates to taxes, revenues, or funds of the state or any of its bureaus, commissions, boards, or departments, in the state revenue commissioner;

(3) As to collecting officers and officers to hold public funds, so far as relates to revenues or funds of a municipality or county, or any board, bureau, or other tribunal or body exercising jurisdiction solely in such county, or of any school district, drainage district, or any other district in such county, and as to banks or depositories in which the revenues or other funds or any of these have been deposited, and as to the sureties on the bonds of any of said officers, banks, or depositories, in the county authority of said county or the governing body of the municipality;

(4) In any case not covered by paragraph (1), (2), or (3) of this Code section, in the Comptroller General. (Ga. L. 1933, p. 78, § 8; Code 1933, § 89-817.)

OPINIONS OF THE ATTORNEY GENERAL

Additional duties imposed on officials. — Since the duty to comply with the deposit security law falls upon institutions under the supervision of the Department of Banking and Finance, the department is obligated to take whatever steps are necessary to ensure

that violations are cured and not repeated. This obligation is in addition to the obligations imposed upon the Comptroller General and other officials by O.C.G.A. § 45-8-19. 1979 Op. Att'y Gen. No. 79-12.

45-8-20. Citation of officer, bank, or depository to show cause; service of notice.

If it shall become known to the official or authority having jurisdiction to cite for accounting that a collecting officer or officer to hold public funds has been guilty of any default or breach of duty as to any tax, revenue, or public funds; or that any bank or depository in which any tax, revenue, or other public funds have been deposited has failed in business or has failed to pay over on demand any such fund so deposited with it, or, whether default is alleged or not, upon the surety on any bond of the kind dealt with in this chapter, whether of an officer, bank, or depository, filing with such official or authority having jurisdiction to cite for accounting a petition

asking for the settlement of the accounts of such principal, it is the duty of such official or authority to cite such officer, bank, or depository and their sureties to come before the official or authority having jurisdiction over the accounting, on a day named, to make an accounting or settlement and to show cause why execution should not issue, if any default be found. Such official shall cause such citation to be served at least ten days before the hearing, unless such service be waived, or the respondents consent in writing to shorter notice. It is not necessary to issue, or serve the citation or notice to or upon any principal or surety who has filed or has joined in filing the petition for citation, nor is it necessary personally to serve such citation upon any officer or other person who, by absconding, absence from the state, or otherwise, prevents personal service; but it is sufficient in such cases to perfect service by leaving a copy of the citation at the most notorious place of abode of such absconding or absent person. (Ga. L. 1933, p. 78, § 9a; Code 1933, § 89-818.)

JUDICIAL DECISIONS

Judgment and execution not void for lack of notice. — Conceding that the commissioners intended to give notice under O.C.G.A. § 45-8-20, any failure to do so would not void the judgment and execution, which they were authorized to, and did in

fact, issue under the provisions of O.C.G.A. § 45-8-25. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

Cited in *Bibb County v. Winslett*, 191 Ga. 860, 14 S.E.2d 108 (1941); *Laurens County v. Keen*, 214 Ga. 32, 102 S.E.2d 697 (1958).

OPINIONS OF THE ATTORNEY GENERAL

Additional duties imposed on officials. — Since the duty to comply with the deposit security law falls upon institutions under the supervision of the Department of Banking and Finance, the department is obligated to take whatever steps are necessary to ensure

that violations are cured and not repeated. This obligation is in addition to the obligations imposed upon the Comptroller General and other officials by O.C.G.A. § 45-8-20. 1979 Op. Att'y Gen. No. 79-12.

45-8-21. Right of interested citizen, taxpayer, or public body to appear at hearing.

Any citizen or taxpayer or any public body interested in the fund in question may appear and be heard before the official or authority at the time and place of hearing. (Ga. L. 1933, p. 78, § 9b; Code 1933, § 89-819.)

45-8-22. Cited official, bank, or depository to file statement of accounts; preparation of statement by citing official or authority; entry of judgment or order in nature of judgment; settling accounts.

At the time and place fixed for the hearing or at an adjournment or continuance thereof, the officer, bank, or depository cited shall file under oath a statement of accounts. If such officer, bank, or depository shall fail to submit such a statement, the citing official or county or municipal authority

shall prepare one from the best information at hand. After giving opportunity to the parties at interest to be heard, the official or county or municipal authority shall proceed to render a judgment or order in the nature of a judgment in which, if no default is found, it shall be so stated; and, if default is found, it shall state the amount of the same and order execution to issue therefor. (Ga. L. 1933, p. 78, § 9c; Code 1933, § 89-820; Ga. L. 1990, p. 8, § 45.)

45-8-23. Authority to issue subpoenas; punishment for contempt for refusal to obey.

Authority is conferred upon the official or county or municipal authority having jurisdiction in the matter to issue subpoenas and to compel the attendance of witnesses and production of books and documents on behalf of any party. If any person shall disobey any such subpoena or order to produce, the official or county or municipal authority shall certify the refusal to the judge of the superior court of the county where the hearing is held, who shall punish the offender as for contempt of the superior court. (Ga. L. 1933, p. 78, § 9d; Code 1933, § 89-821; Ga. L. 1990, p. 8, § 45.)

45-8-24. Joinder of parties in proceedings for accounting; power of authorities to determine liability.

In any proceeding for accounting under this chapter, there may be joined originally or by amendment, either before or after appeal, all such officers, depositories, banks, and securities on bonds of any of them as shall be necessary or proper for the full determination of any matter in controversy, and especially, but without limiting the generality of the foregoing, for determining the respective liabilities as between an officer and some other officer, between an officer and a bank or depository, between them or any of them and the sureties of any of them, or between sureties of any of them. The proper authority or any court which shall have acquired jurisdiction in any proceeding for accounting by appeal or otherwise shall have the jurisdiction to determine completely the respective liabilities of the parties as among themselves, as well as the liability of any officer, bank, or depository and the sureties, to the public body or bodies involved. The jurisdiction given in this chapter shall extend not only to the compelling of an officer and his sureties to account for taxes or other public money which he has in fact collected, but for money which it was his duty to collect and which, in the exercise of good faith and ordinary diligence, he should have collected; and such jurisdiction may be exercised against any public officer who has received or collected the money of any public body, whether or not it was a part of his official duty to receive it or collect it. (Ga. L. 1933, p. 78, § 9i; Code 1933, § 89-826.)

45-8-25. Issuance of execution against defaulting officer, bank, depository, or surety; enforcement; proceedings to arrest enforcement; burden of proof at trial; parties; effect of admission of correctness by defendant in execution.

The official or county or municipal authority having jurisdiction to cite for accounting may, without issuing or serving a citation or notice, issue or cause to be issued an execution against any defaulting collecting officer, officer to hold public funds, or any bank or depository in which public funds have been deposited and the sureties on the bonds of any of them for default as to any of the matters as to which such officer, bank, depository, or surety might be cited, and for the amount of the loss sustained by the public body or public bodies alleged in such execution to be sustained through such default. Such execution shall be prima-facie evidence of the facts therein recited, including the amount of loss sustained, and shall be enforceable as an execution for said amount; provided, however, that the enforcement of such execution may be arrested by proceedings in equity, or, after levy, by affidavit of illegality in which the defendant in fi. fa. whose property has been levied on shall deny liability for the amount set out in such execution or some part thereof. The affidavit of illegality shall be returned by the levying officer to the superior court of the county in which the alleged defaulting officer resides. On the trial of the case, whether in equity or on affidavit of illegality, the burden of proof shall be on the official or authority issuing the execution. Any other person, corporation, or public body at interest may on his or its own motion or on motion of either party to the cause be made a party thereto and be bound by the final judgment. Such an execution shall become final process against any defendant in execution named therein who shall endorse thereon in writing his admission of the correctness of the same and an agreement that the same shall proceed against him as final process, but such admission shall not be binding on anyone except the person or corporation signing the same. (Ga. L. 1933, p. 78, § 9g; Code 1933, § 89-824; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Authority to issue ex parte an execution.

— Where the dispute is one of law and not of fact, the commissioners are authorized to issue ex parte an execution for the amounts shown to have been retained by the tax commissioner in the commissioner's reports. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

Execution not void for failure to give notice. — Conceding that the commissioners intended to give notice under O.C.G.A. § 45-8-20, any failure to do so would not void the judgment and execution, which they

were authorized to, and did in fact, issue under the provisions of O.C.G.A. § 45-8-25. *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

Execution prima facie evidence of facts.

— O.C.G.A. § 45-8-25 provides that the county authority having jurisdiction to cite for an accounting may, without issuing or serving citation or notice, issue or cause to be issued an execution against any officer and the sureties on official bond for the amount alleged in the execution, which shall be prima facie evidence of the facts. *Keen v.*

Lewis, 215 Ga. 166, 109 S.E.2d 764 (1959).

Burden of proof shifted to officer cited in execution. — The law presumes, when a fi. fa. is issued against a county tax collector, that the amount named therein is due by the officer, and the burden is on the tax collector to show that the fi. fa. is invalid or inoperative in whole or in part, notwithstanding any provision in O.C.G.A. § 45-8-25. When the fi. fa. is introduced in evidence, the burden of proof shifts from the official issuing the execution to the tax collector. *Adamson v. Turner*, 192 Ga. 54, 14 S.E.2d 445 (1941).

Recordation of execution insufficient as demand on surety. — Simply issuing the execution and recording it on the execution docket was not sufficient to constitute the demand on the surety which O.C.G.A. § 45-8-25 requires. *Employers Liab. Assurance Corp. v. Lewis*, 101 Ga. App. 802, 115 S.E.2d 387 (1960).

Cited in *Bibb County v. Winslett*, 191 Ga. 860, 14 S.E.2d 108 (1941); *Cain v. Lumpkin County*, 229 Ga. 274, 190 S.E.2d 910 (1972).

45-8-26. Action by bond obligee before citation or execution.

Nothing in this chapter shall be construed as preventing the obligee in any bond of any collecting officer, officer to hold public funds, or any bank or depository in which public funds have been deposited from maintaining an action at law or in equity thereon when the official or county or municipal authority having jurisdiction to issue a citation has not begun a proceeding thereon by ordering a citation or execution to issue. (Ga. L. 1933, p. 78, § 9h; Code 1933, § 89-825; Ga. L. 1990, p. 8, § 45.)

45-8-27. Procedure for accounting where officer succeeds himself.

When any officer to whom this chapter relates shall succeed himself in office or has been elected to succeed himself in office or has been elected to succeed himself in a subsequent term, such officer or the surety on his bond either for the current term or for the term which has or shall have expired, or for a term about to begin, may file with the official or the county or municipal authority having jurisdiction to cite for accounting a petition asking that an accounting be had as to the acts of such officer during the term which has ended or is about to end. Such official or county or municipal authority shall then cause a citation to issue and be served on the officer and the sureties on his bonds for both terms, except such of them as shall be party to or join in the petition; and such further proceedings shall be had as are provided for in Code Section 45-8-20 in cases of citation for accounting. In the order or judgment rendered by the official or county or municipal authority conducting the accounting, or, in case of appeal, in the judgment of the court, the condition of the accounts of such officers shall be stated as between the two terms and as between the sureties for the respective terms; and the order or judgment shall set the terms upon compliance with which the sureties on the bond for the expired or expiring term shall be discharged or liability as to taxes, revenues, and public moneys satisfied; and it shall also settle and determine between the sureties in the respective bonds the matters for which each is or may be liable. (Ga. L. 1933, p. 78, § 9f; Code 1933, § 89-823; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Cited in *Keen v. Lewis*, 215 Ga. 166, 109 S.E.2d 764 (1959).

45-8-28. Personal representative of insane or deceased officer as party to proceedings.

Whenever any of the officers with whom this chapter deals becomes non compos mentis or dies, the guardian or personal representative of such insane or deceased officer shall be a sufficient party to any proceeding in this chapter, in lieu of such insane or deceased officer. (Ga. L. 1933, p. 78, § 16; Code 1933, § 89-837.)

45-8-29. Effect of judgment or execution as lien; transfer of judgment or execution; enforcement by transferee; effect of sale or transfer of assets by bank to innocent purchaser for value.

Any judgment or execution issued in pursuance of this chapter or in any action against the principal or surety upon any bond of any of the officers, banks, or depositories dealt with in this chapter shall have the effect of preserving and shall be a means of enforcing the liens created by the laws of this state, including this chapter, upon the property and assets of the principal and sureties on the bonds of officers and depositories and the assets of banks. Upon the payment of the amount of such judgment or execution by any surety or other person, either the official or county or municipal authority issuing the same or any officer authorized to levy the execution shall, at the request of the person or corporation making the payment, transfer the judgment or execution to such person or corporation or his or its order, and the transferee shall be entitled to enforce the same and the lien therein represented, provided that, in order to preserve the lien as against subsequent bona fide purchasers for value, the judgment or execution shall be entered on the general execution docket as if it were a common law execution. Any sale or transfer of any part of its assets by a bank to an innocent purchaser for value in the ordinary course of business prior to the institution of a proceeding against said bank, through which the lien may be preserved or enforced, shall pass to the purchaser or transferee such assets free from the lien created in this Code section. (Ga. L. 1933, p. 78, § 15; Code 1933, § 89-836; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, §§ 480, 495.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 295.

45-8-30. Release of property of county officers from state lien — Authorization.

The judge of the probate court, sitting for county purposes, or the board of county commissioners, or such other county governing authority in this state has the discretionary power and authority to release a given portion of the property of a municipal or county treasurer, tax collector, or tax commissioner from the lien of the state or county or municipality in question against the property of such officers on their respective bonds. (Ga. L. 1951, p. 751, § 1; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 788 et seq. **C.J.S.** — 85 C.J.S., Taxation, § 1027.

45-8-31. Release of property of county officers from state lien — Procedure generally.

The officer desiring the release of a portion of his property shall file a petition in writing with the governing authority of the municipality or county in which he functions. The petition shall describe the property sought to be released and the reasons of the applicant for desiring the release, such as whether the applicant desires to sell the property or borrow money on the security thereof; and it shall give the name of the purchaser or the lender as the case may be. After consideration, the said governing authority may in its discretion grant the release in question, evidencing assent to the release by a writing in the nature of a release or quitclaim deed, to which a copy of the resolution or order of sanction shall be attached as a part thereof; or, after consideration, the application may in the discretion of said authority be rejected. (Ga. L. 1951, p. 751, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, § 788 et seq. **C.J.S.** — 85 C.J.S., Taxation, § 1027.

45-8-32. Release of property of county officers from state lien — Proposed sale or loan to be consummated within 60 days from authorization of release.

In the event the release is granted, it is not incumbent upon the person named in the application as the purchaser or lender on the security of the property in question to inquire into the merits of the application; but the proposed sale or loan must be consummated within 60 days from the date of the authorization of the release, otherwise on the expiration of the sixtieth day it shall become void and ineffectual. (Ga. L. 1951, p. 751, § 3.)

45-8-33. Effect of chapter upon liability of officers to private persons.

This chapter is not intended to affect any liability which any of the officers to whom this chapter is applicable may incur to any private person. (Ga. L. 1933, p. 78, § 17; Code 1933, § 89-803.)

CHAPTER 9

INSURING AND INDEMNIFICATION OF PUBLIC OFFICERS AND EMPLOYEES

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- 45-9-3.1. Immunity from liability for law enforcement officers directing or escorting funeral processions [Repealed].
- 45-9-4. Commissioner of administrative services to purchase insurance or indemnity contracts; self-insurance program; Hazardous Materials Liability Reserve Fund; insurer becoming insolvent.
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Cross references. — Compensation of employees of state institutions who contract

tuberculosis or infectious hepatitis, Ch. 29, T. 31.

RESEARCH REFERENCES

ALR. — Construction and application of aviation exclusion clauses in public liability or homeowners' insurance policies, 39 ALR4th 201.

What is "aircraft" or the like within meaning of exclusion or exception clause of insurance policy, 39 ALR4th 214.

ARTICLE 1

STATE OFFICERS AND EMPLOYEES

45-9-1. General provisions; disclosure of insurance or indemnification in legal action.

(a) In addition to any other compensation which may be paid to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the executive, judicial, or legislative branch of government of this state, each such agency, board, bureau, commission, department, or authority is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity or to formulate sound programs of self-insurance utilizing funds available to such agency, board, bureau, commission, department, or authority, insuring or indemnifying

such officers, officials, or employees to the extent that they are not immune from liability against personal liability for damages arising out of the performance of their duties or in any way connected therewith. Such policies of liability insurance, contracts of indemnity, or programs of self-insurance may also provide for reimbursement to an officer, official, or employee of any agency, board, bureau, commission, department, or authority of the state for reasonable legal fees and other expenses incurred in the successful defense of a criminal action arising out of the performance of his official duties. In addition, in the case of an officer, official, or employee who is required to maintain a professional license, such reimbursement may also be provided for legal fees and other expenses so incurred in the successful defense of a charge arising out of the performance of his official duties in proceedings before a professional licensing board, disciplinary board or commission, or other similar body. Legal fees and other expenses shall be subject to adjustment by and the approval of the Attorney General.

(b) Such agencies, boards, bureaus, commissions, departments, or authorities may expend federal and state or other available funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of such agency, board, bureau, commission, department, or authority.

(c) For the purpose of this article, the term "agency" shall specifically include, but shall not be limited to, public retirement systems of state-wide application established by the laws of this state, but shall not include counties or municipalities; provided, however, that the employees of community service boards, county departments of health, and county departments of family and children services as well as the members of the boards of said departments shall be considered to be state employees or officials for the purpose of this article. In order to facilitate the administration of liability coverage or other insurance coverages provided the community service boards, county departments of health, and county departments of family and children services, the Department of Human Resources must designate a central office which will be responsible for obtaining, submitting, and collecting all underwriting information and insurance premiums requested and assessed by the Department of Administrative Services.

(d) The existence of such insurance or indemnification shall not be disclosed or suggested in any action brought against such individual. (Ga. L. 1977, p. 1051, § 1; Ga. L. 1979, p. 674, § 1; Ga. L. 1981, p. 1383, § 1; Ga. L. 1987, p. 993, § 1; Ga. L. 1994, p. 1717, § 3.)

Law reviews. — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979). For article sur-

veying developments in Georgia insurance law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 143 (1981). For article, "The Fall and Rise of Official Immunity," see 25

Ga. St. B.J. 93 (1988). For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991).

JUDICIAL DECISIONS

Scope of O.C.G.A. § 45-9-1. — O.C.G.A. § 45-9-1 only authorizes the purchase of liability insurance or formulation of plans of self-insurance to insure public officers or employees of the agency, board, bureau, commission, department, or authority of the state to the extent that they are not immune from liability. The statute does not authorize the purchase of insurance by an agency specifically for the agency as the entity enjoys immunity from suit unless the immunity has been waived. *Davis v. State*, 211 Ga. App. 285, 439 S.E.2d 40 (1993).

O.C.G.A. § 45-9-1 only authorizes the purchase of liability insurance covering agency officers, officials, and employees, and not for the agency itself. *Donaldson v. DOT*, 212 Ga. App. 240, 441 S.E.2d 473 (1994).

O.C.G.A. § 45-9-1(d) does not prohibit discovery by a tort plaintiff of liability insurance policies purchased by a government

agency for its employees. *Pate v. Caballero*, 253 Ga. 787, 325 S.E.2d 375 (1985).

Self-insurance plans. — Under O.C.G.A. § 45-9-1, and O.C.G.A. §§ 45-9-20 and 45-9-21, dealing with liability insurance for government employees and officials, only state self-insurance plans constitute a waiver of sovereign immunity. There is no statutory provision for a county to set up a self-insurance plan. *Logue v. Wright*, 260 Ga. 206, 392 S.E.2d 235 (1990); *Pizza Hut of Am., Inc. v. Hood*, 198 Ga. App. 112, 400 S.E.2d 657 (1990), cert. denied, 198 Ga. App. 897, 400 S.E.2d 657 (1991).

County hospital authority is not authorized to establish a self-insurance fund. *Hospital Auth. v. Litterilla*, 199 Ga. App. 345, 404 S.E.2d 796 (1991).

Cited in *Kurtz v. Williams*, 188 Ga. App. 14, 371 S.E.2d 878 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Scope of probation supervisors' liability. — Notwithstanding the waiver of sovereign immunity to the extent of any liability insurance provided, the potential liability of probation supervisors supervising court-ordered community service by probationers (a discretionary function as opposed to a ministerial duty) is only for conduct which is willful, wanton, or outside the scope of authority of the supervisor. 1983 Op. Att'y Gen. No. 83-18.

Payment of attorney's fees prior to action not authorized. — O.C.G.A. § 45-9-1 does not authorize a public body to pay one of its employees' attorney's fees, which were incurred prior to the commencement of a civil, criminal or quasi-criminal action against the employee arising out of the performance of the employee's duties. 1995 Op. Att'y Gen. No. 95-38.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 190, 191.

ALR. — Constitutionality of statute appropriating money to reimburse public officer or employee for money paid or liability incurred by him in consequence of breach of duty, 155 ALR 1438.

Personal liability of public officer for killing or injuring animal while carrying out

statutory duties with respect to it, 2 ALR3d 822.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest lawbreaker, 41 ALR3d 700.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out

of performance of public duties, 71 ALR3d 6. spection and subsequent enforcement, 69 ALR4th 739.

Municipal liability for negligent fire in-

45-9-2. Members of organized militia serving on state active duty.

Members of the organized militia who are serving on state active duty upon orders of the Governor may be provided protection against personal liability for damages sustained by third parties and arising out of the performance of such members' duties while serving on state active duty. At the option of the adjutant general, members of the organized militia who are performing their duties in connection with domestic action projects may also be provided protection against personal liability for damages sustained by third parties arising out of the performance of such members' duties. The commissioner of administrative services shall prescribe the terms and conditions under which such personnel may be covered by any liability insurance policy or contract of indemnity or other like or similar programs administered by the commissioner pursuant to this article to provide such protection. (Ga. L. 1980, p. 1358, § 1; Ga. L. 1990, p. 8, § 45.)

45-9-3. Law enforcement personnel serving on temporary assignment.

Law enforcement personnel who are participants in any program coordinated and administered by the Georgia Organized Crime Prevention Council, which program provides for the temporary assignment or loan of local law enforcement personnel to other local law enforcement agencies for the purpose of such law enforcement officers serving as undercover agents in criminal investigations or in any other manner or capacity assisting such local agencies in criminal investigations, may be provided protection against personal liability for damages sustained by third parties and arising out of the performance of such law enforcement personnel's duties while serving on such temporary assignment or loan. The commissioner of administrative services shall prescribe the terms and conditions under which such personnel may be covered by any liability insurance policy or contract of indemnity or other like or similar programs administered by the commissioner pursuant to this article to provide such protection, provided that persons employed by the district attorneys of the state, irrespective of the source of the funds used to pay such persons, shall be allowed to purchase policies of liability insurance and contracts of indemnity insurance and for the purpose of this article shall be considered to be state employees. (Ga. L. 1980, p. 399, § 1.)

45-9-3.1. Immunity from liability for law enforcement officers directing or escorting funeral processions.

Repealed by Ga. L. 1990, p. 1319, § 1, effective July 1, 1990.

Editor's notes. — This Code section was based on Ga. L. 1987, p. 993, § 2. The provisions of former Code Section 45-9-3.1 have been added to Code Section 40-6-76 as subsection (h) by Ga. L. 1990, p. 1319, § 2.

45-9-4. Commissioner of administrative services to purchase insurance or indemnity contracts; self-insurance program; Hazardous Materials Liability Reserve Fund; insurer becoming insolvent.

(a) When the commissioner of administrative services determines that an adequate number of agencies, boards, bureaus, commissions, departments, or authorities of this state have requested the commissioner to do so, the commissioner shall have the authority to purchase policies of liability insurance, reinsurance, or contracts of indemnity insuring or indemnifying the officers, officials, or employees of such agencies, boards, bureaus, commissions, departments, or authorities against personal liability for damages arising out of the performance of their duties or in any way connected therewith, under a master policy or on a blanket coverage basis with or without deductibles or excess coverage. The commissioner may provide for endorsements for contractual liability and, where necessary or convenient to the public functions of the state, the commissioner may also provide for additional insureds. In such event, the commissioner may alternatively retain all moneys paid to the Department of Administrative Services as premiums on such policies of liability insurance or contracts of indemnity, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the payment of such liability under, and the expenses necessary to administer properly, a self-insurance program. If the commissioner decides to institute a self-insurance program, the commissioner shall establish and maintain a reserve fund for the payment of liabilities arising out of claims against officers, officials, and employees of the state and for any additional insureds. Any amounts held by the commissioner which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the self-insurance program. The director of the Office of Treasury and Fiscal Services shall invest these funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the self-insurance program. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

(b) On April 19, 1994, the commissioner of administrative services shall transfer all funds from the Hazardous Materials Liability Reserve Fund into

the State Tort Claims Trust Fund established pursuant to Article 2 of Chapter 21 of Title 50.

(c) If the insurer of any liability policy purchased for the benefit of the officers and employees of the state or state authorities shall become or has become insolvent, be placed into receivership, be subject to any other delinquency or bankruptcy proceeding, cancel its policies, or take or have taken against it like actions, the commissioner of administrative services may protect such employees against loss by such means as he may determine, including without limitation undertaking to cover, insure, or self-insure the corresponding liabilities and expenses, including without limitation claims, contingent claims, and incurred but unreported claims. However, the commissioner shall incur no obligation beyond the funds then available for commitment to the obligation. For these purposes the commissioner may proceed against such insurer, its receiver, or other representative and any other appropriate person by means of the state's own claim or by assignment, subrogation, or otherwise.

(d) The commissioner of administrative services is authorized in his discretion either to purchase commercial insurance coverage or to self-insure under an existing self-insurance trust fund all foster parents and foster children participating in programs sponsored by the Department of Human Resources or in the care and custody of the Department of Human Resources upon a request from the commissioner of human resources. The commissioner of administrative services will establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Human Resources is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds.

(e) If requested by the Georgia State Finance and Investment Commission, the commissioner of administrative services is authorized, at the commissioner's discretion, to establish a consolidated insurance program to furnish general liability insurance, workers' compensation insurance, builders' risk insurance, or general liability and workers' compensation and builders' risk insurance for all contractors on a construction project (wrap up). The premium for such insurance shall be paid from funds appropriated by the General Assembly to construct the project, and, at the completion of a project, any savings attributable to the consolidated insurance program less administrative costs shall be returned by the Department of Administrative Services to the Georgia State Finance and Investment Commission.

(f) The commissioner of administrative services is authorized in his or her discretion either to purchase commercial insurance coverage or to self-insure under an existing self-insurance trust fund all attention and contract homeparents and those youth participating in programs sponsored by the Department of Juvenile Justice or in the care and custody of the

Department of Juvenile Justice upon a request from the commissioner of juvenile justice. The commissioner of administrative services shall establish appropriate premiums and limits applicable to such requested insurance coverage. The Department of Juvenile Justice is authorized to pay the premiums for such insurance from available appropriated funds or other available sources of funds. (Ga. L. 1977, p. 1051, § 2; Ga. L. 1986, p. 150, § 1; Ga. L. 1987, p. 3, § 45; Ga. L. 1988, p. 1714, § 1; Ga. L. 1991, p. 1154, § 1; Ga. L. 1992, p. 2966, § 2; Ga. L. 1993, p. 416, § 1; Ga. L. 1994, p. 1717, § 4; Ga. L. 1997, p. 1453, §§ 1, 2; Ga. L. 2000, p. 1474, § 5.)

The 2000 amendment, effective May 1, 2000, in subsection (a), substituted the present fifth sentence for the former fifth sentence which read: "The commissioner shall invest any such moneys in the same manner as other moneys in the commissioner's possession." and added the sixth through tenth sentences.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "On April 19,

1994, the commissioner of administrative services" was substituted for "On the effective date of this Act, the commissioner of the Department of Administrative Services" in subsection (b).

Pursuant to Code Section 28-9-5, in 1995, "commissioner of administrative services" was substituted for "commissioner of the Department of Administrative Services" throughout subsections (d) and (e).

JUDICIAL DECISIONS

Cited in Price v. Department of Transp., 182 Ga. App. 353, 356 S.E.2d 45 (1987);

Price v. Department of Transp., 257 Ga. 537, 361 S.E.2d 146 (1987).

RESEARCH REFERENCES

ALR. — Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Constitutionality of statute appropriating money to reimburse public officer or employee for money paid or liability incurred by him in consequence of breach of duty, 155 ALR 1438.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 ALR3d 6.

45-9-4.1. Participation in program of self-insurance by Georgia Correctional Industries Administration; extension of coverage to officers, officials, and employees.

The Georgia Correctional Industries Administration, as a body corporate and politic, and as an instrumentality and public corporation of this state, may, at its discretion, participate in any program of self-insurance administered by the commissioner of administrative services pursuant to Code Section 45-9-4; and the commissioner of administrative services is authorized to extend liability coverage under such program of self-insurance to the officers, officials, or employees of the Georgia Correctional Industries Administration in the same manner as is presently or may hereafter be provided for officers, officials, or employees of any agency, board, bureau,

commission, department, or authority pursuant to Code Section 45-9-4. (Code 1981, § 45-9-4.1, enacted by Ga. L. 1985, p. 1117, § 1.)

Code Commission notes. — Pursuant to 45-9-4” was substituted for “said Code section” at the end of this Code section.

45-9-4.2. Liability coverage for nonprofit agencies providing services to the mentally retarded.

(a) For the purposes of this Code section, the term “nonprofit agency” means a nonprofit or charitable organization, association, corporation, partnership, or other entity.

(b) Nonprofit agencies and their employees, which agencies have contracted with the Department of Human Resources to furnish certain services to the mentally retarded or have subcontracted with similar nonprofit agencies for the same, shall be provided protection against personal liability for damages sustained by third parties arising out of the provision of authorized services to the mentally retarded by an employee of such agency during the course of such person’s employment with such nonprofit agency. The commissioner of administrative services shall prescribe the terms and conditions under which such nonprofit agencies and their employees shall be covered by any liability insurance policy or contract of indemnity or similar program administered by the commissioner pursuant to this article to provide such protection, provided the cost of such insurance, indemnity, or similar program furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency. (Code 1981, § 45-9-4.2, enacted by Ga. L. 1990, p. 1836, § 1.)

JUDICIAL DECISIONS

O.C.G.A. § 45-9-4.2 does not provide immunity but rather provides for the protection against personal liability for damages sustained by third parties and, if no liability has been established, the application of O.C.G.A. § 45-9-4.2 is premature. *Washington v. Department of Human Resources*, 241 Ga. App. 319, 526 S.E.2d 354 (1999).

45-9-5. Article not waiver of immunity from action or provision of liability insurance protection.

Nothing in this article shall constitute a waiver of the immunity of the state from any action. The exercise of authority provided in this article shall not constitute the provision of liability insurance protection under Article I, Section II, Paragraph IX of the Constitution. (Ga. L. 1977, p. 1051, § 3; Ga. L. 1986, p. 150, § 2.)

Law reviews. — For article, “The Fall and Rise of Official Immunity,” see 25 Ga. St. B.J. 93 (1988). For article, “Local Government Tort Liability: the Summer of ’92,” see 9 Ga. St. U.L. Rev. 405 (1993).

JUDICIAL DECISIONS

Waiver of sovereign immunity. — Establishment of comprehensive general liability trust fund for Department of Public Safety employees, covering negligence in performance of official acts, constituted a waiver of sovereign immunity to the extent of the available insurance in the case of an accident resulting from a high-speed chase by police. *Martin v. Georgia Dep't of Pub. Safety*, 257 Ga. 300, 357 S.E.2d 569 (1987), cert. denied, 484 U.S. 998, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988).

Although O.C.G.A. § 45-9-5 expresses a legislative intent that sovereign immunity of the state is not to be waived through the furnishing of insurance authorized by O.C.G.A. § 45-9-4, the language of the Constitution (Ga. Const. 1983, Art. I, Sec. II, Para. IX) forces the court to reach a contrary result. *Price v. Department of Transp.*, 257 Ga. 537, 361 S.E.2d 146 (1987).

Cited in *Price v. Department of Transp.*, 182 Ga. App. 353, 356 S.E.2d 45 (1987).

RESEARCH REFERENCES

ALR. — Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Constitutionality of statute appropriating money to reimburse public officer or employee for money paid or liability incurred by him in consequence of breach of duty, 155 ALR 1438.

Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCS § 1983 or Bivens action for damages where claim for equitable relief is also pending — post-Harlow cases, 105 ALR Fed. 851.

ARTICLE 2

MEMBERS OF GOVERNING BODIES OF MUNICIPALITIES,
COUNTIES, AND OTHER PUBLIC BODIES**45-9-20. Authorization of purchase; actions against insurers or indemnitors.**

In addition to any other compensation which may be paid to members of the governing bodies of municipalities, counties, and other public bodies, and to supervisors, administrators, employees, or other elected or appointed public officers, each municipality, county, and other public body of this state is authorized, in its discretion, to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the members of such governing bodies and such supervisors, administrators, employees, or other elected or appointed officers against personal liability for damages arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or other statutory rights, whether state, federal, or local. Such municipalities, counties, and other public bodies may expend state, federal, and local funds for such purposes. The amount of such insurance or indemnity shall also be in the discretion of the governing body of such municipality, county, or other public body. No action shall be maintained against the person or company issuing such insurance or contracting for such indemnity until final judgment has first

been entered against the individual covered by such policy or contract, and the existence of such insurance or indemnity shall not be disclosed or suggested in any action brought against such individual. (Ga. L. 1974, p. 702, § 1.)

Cross references. — Liability of public agents on public contracts, § 10-6-88.

Law reviews. — For article considering the public official's potential liability for funds, losses and torts, and suggesting insurance coverage, see 11 Mercer L. Rev. 288

(1960). For article, "Personal Liability of State Officials Under State and Federal Law," see 9 Ga. L. Rev. 821 (1975). For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

Legislative intent. — It is the intent of O.C.G.A. §§ 45-9-20 through 45-9-23, with certain exceptions, to authorize a county, municipality, or other public body to purchase insurance or adopt policies to indemnify governmental employees or officers against personal liability for damages arising out of the performance of their duties, and to defend actions in which such damages are sought, in those instances in which a defense of sovereign or official immunity is unavailable. *Hendon v. DeKalb County*, 203 Ga.

App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

Self-insurance plans. — Under O.C.G.A. § 45-9-20, and O.C.G.A. §§ 45-9-1 and 45-9-21, dealing with liability insurance for government employees and officials, only state self-insurance plans will waive sovereign immunity. There is no statutory provision for a county to set up a self-insurance plan. *Logue v. Wright*, 260 Ga. 206, 392 S.E.2d 235 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 190, 230.

ALR. — Right to use public funds to carry insurance for public officers or employees, 27 ALR 1267.

Power of municipal corporation to take out liability insurance, 33 ALR 717.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Constitutionality of statute appropriating money to reimburse public officer or employee for money paid or liability incurred

by him in consequence of breach of duty, 155 ALR 1438.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest lawbreaker, 41 ALR3d 700.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 ALR3d 6.

Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

45-9-21. Defense of civil, criminal, or quasi-criminal actions in lieu of insurance.

(a) In lieu of obtaining the insurance or indemnity referred to in Code Section 45-9-20 or in addition thereto, such municipalities, counties, and other public bodies may, in their discretion, as a part of the compensation and terms of employment of members of the governing bodies of such

municipalities, counties, and other public bodies, and of supervisors, administrators, employees, or other elected or appointed officers, adopt policies whereby the municipality, county, and other public body will undertake to defend all or specified civil, criminal, or quasi-criminal actions brought or maintained against members of the municipality, county, or other public body, or against supervisors, administrators, employees, or other elected or appointed municipal or county officers, arising out of the performance of their duties or in any way connected therewith, whether based upon negligence, violation of contract rights, or violation of civil, constitutional, common law, or statutory rights.

(b) The governing authority of a municipality, county, or other public body shall not be authorized to furnish a defense to any person charged with a criminal offense involving theft, embezzlement, or other like crime with respect to the property or money of or in which said governmental entity has an interest.

(c) Notwithstanding the provisions of subsection (b) of this Code section, the governing authority of a municipality, county, or other public body shall be authorized to reimburse any person charged with a criminal offense involving theft, embezzlement, or other like crime with respect to the property or money of or in which said governmental entity has an interest for all or a part of the cost of the defense of such person if such person is found not guilty of such crime or if the charges against such person are dismissed or nolle prossed.

(d) A municipality, county, or other public body may expend state, federal, and local funds to effectuate the provisions of this Code section, including, but not limited to, attorney's fees, court costs, deposition costs, witness fees and compensation, and all other like costs, expenses, and fees.

(e)(1) As used in this subsection, the term "county officer" means the sheriff, the judge of the probate court, the clerk of the superior court, and the tax commissioner or tax collector and tax receiver of a county.

(2) In any civil case in which the county attorney has a conflict of interest which would ethically prevent the county attorney from representing both the county, the governing authority of the county, or another county officer or employee and the county officer, upon a determination by the chief judge of the superior court of the circuit in which the county is located that an ethical conflict exists, the county officer shall be authorized to employ individual legal counsel to represent such county officer in such matter. The governing authority of the county shall pay the reasonable fees of such individual counsel and all applicable court costs, deposition costs, witness fees and compensation, and all other like reasonable costs, expenses, and fees; provided, however, that such attorneys' fees shall be no more than the rate paid to the county attorney for similar representation or in accordance with a schedule of rates for

outside counsel adopted by the governing authority, if any. Such fees and costs shall be authorized by the chief judge of the superior court of the circuit in which the county is located. This subsection shall not apply unless the governing authority of the county has first denied a written request by a county officer for counsel. (Ga. L. 1974, p. 702, § 3; Ga. L. 1991, p. 1821, § 1; Ga. L. 1995, p. 1063, § 1.)

Law reviews. — For article, “Personal Liability of State Officials Under State and Federal Law,” see 9 Ga. L. Rev. 821 (1975).

For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

O.C.G.A. § 45-9-21 constitutional. — O.C.G.A. § 45-9-21 on its face is not unconstitutional as being violative of the due process clause of either the federal Constitution or the Georgia Constitution. *Horn v. City of Atlanta*, 236 Ga. 247, 223 S.E.2d 647 (1976).

Legislative intent. — It is the intent of O.C.G.A. §§ 45-9-20 through 45-9-23, with certain exceptions, to authorize a county, municipality, or other public body to purchase insurance or adopt policies to indemnify governmental employees or officers against personal liability for damages arising out of the performance of their duties, and to defend actions in which such damages are sought, in those instances in which a defense of sovereign or official immunity is unavailable. *Hendon v. DeKalb County*, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

City not required to defend employees. — O.C.G.A. § 45-9-21 does not “require” the city to defend any civil action against its employees, but merely permits it to do so, pursuant to an adopted policy, as a part of the compensation paid by the employer to the employee. *Horn v. City of Atlanta*, 236 Ga. 247, 223 S.E.2d 647 (1976).

Discretion in selecting what actions to defend. — The phrase “in their discretion” indicates a legislative intent to give counties considerable latitude in determining what actions will be defended. A resolution of county commissioners to pay attorney fees in

the defense of two “specified” cases against a sheriff is within the authority given under O.C.G.A. § 45-9-21. *Haywood v. Hughes*, 238 Ga. 668, 235 S.E.2d 2 (1977).

Employment of counsel. — A county governing authority has the implicit power to employ counsel for county officers. *Stephenson v. Board of Comm’rs*, 261 Ga. 399, 405 S.E.2d 488 (1991).

County governing authority’s employment of counsel to represent a superior court clerk did not violate Ga. Const. 1983, Art. IX, Sec. II, Paras. I(c)(1) or (7), which preclude the authority from exercising any power in a manner affecting “any elective county office” or “any court or the personnel thereof.” *Stephenson v. Board of Comm’rs*, 261 Ga. 399, 405 S.E.2d 488 (1991).

County’s duty to pay attorney fees. — Where an official, acting in official capacity, is required to hire outside counsel to assert a legal position the local government attorney cannot (because of a conflict in representing the local government) or will not assert, and the official is successful in asserting his or her position, the local government must pay the official’s attorney fees. *Haralson County v. Kimball*, 243 Ga. App. 559, 533 S.E.2d 762 (2000).

Cited in *Wayne County Bd. of Comm’rs v. Warren*, 236 Ga. 150, 223 S.E.2d 133 (1976); *Nash v. Pierce*, 238 Ga. App. 466, 519 S.E.2d 462 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 191.

C.J.S. — 64A C.J.S., Municipal Corporations, § 1575.

ALR. — Liability of public officer or his

bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Constitutionality of statute appropriating money to reimburse public officer or employee for money paid or liability incurred by him in consequence of breach of duty, 155 ALR 1438.

Personal liability of policeman, sheriff, or similar peace officer or his bond, for injury

suffered as a result of failure to enforce law or arrest lawbreaker, 41 ALR3d 700.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties, 71 ALR3d 90.

Municipal liability for negligent fire inspection and subsequent enforcement, 69 ALR4th 739.

45-9-22. Payment of claims or judgment against members of municipal, county, or other public body.

(a) Any municipality, county, or other public body may, in its discretion, adopt a policy establishing the terms and conditions under which it may pay part or all of any claim or civil judgment rendered against any person whose defense such municipality, county, or other public body is authorized to undertake under Code Section 45-9-21. Any such disbursement shall be deemed to be for public purposes and may be paid from state, federal, or local funds. No attempt shall be made at the trial of any action brought against a person covered under this Code section to suggest the fact that the municipality, county, or public body will be responsible for any judgment therein.

(b) The failure to adopt a policy as provided in this Code section prior to making any payments authorized by this Code section shall not invalidate any such payments if the governing authority of the municipality, county, or public body shall, within a reasonable time after the fact of such failure has been brought to its attention, adopt a policy as provided in this Code section. (Ga. L. 1978, p. 1380, § 1.)

JUDICIAL DECISIONS

Legislative intent. — It is the intent of the Code sections comprising Article 2, O.C.G.A. § 45-9-20 et seq., with certain exceptions, to authorize a county, municipality, or other public body to purchase insurance or adopt policies to indemnify governmental employees or officers against personal liability for damages arising out of the perfor-

mance of their duties, and to defend actions in which such damages are sought, in those instances in which a defense of sovereign or official immunity is unavailable. *Hendon v. DeKalb County*, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

RESEARCH REFERENCES

ALR. — Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

Constitutionality of statute appropriating

money to reimburse public officer or employee for money paid or liability incurred by him in consequence of breach of duty, 155 ALR 1438.

Personal liability of policeman, sheriff, or

similar peace officer or his bond, for injury suffered as a result of failure to enforce law or arrest lawbreaker, 41 ALR3d 700.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for

liability arising out of performance of public duties, 71 ALR3d 90.

Payment of attorney's services in defending action brought against officials individually as within power or obligation of public body, 47 ALR5th 535.

45-9-23. Waiver of immunity from action.

Nothing in this article shall be construed as waiving any immunity or privilege of any kind now or hereafter enjoyed by any municipality, county, or other public body or by any member of the governing body thereof or by any supervisor, administrator, employee, or other elected or appointed officer or by any other public body, board, agency, or political subdivision of this state. (Ga. L. 1974, p. 702, § 2; Ga. L. 1982, p. 3, § 45; Ga. L. 1987, p. 3, § 45.)

Cross references. — Liability of public agents on public contracts, § 10-6-88. Liability of municipal corporations for acts or omissions generally, Ch. 33, T. 36.

Law reviews. — For article on insurance and indemnity for Georgia local government officers under Georgia law, see 13 Ga. L. Rev. 747 (1979).

JUDICIAL DECISIONS

Legislative intent. — It is the intent of the Code sections comprising Article 2, O.C.G.A. § 45-9-20, with certain exceptions, to authorize a county, municipality, or other public body to purchase insurance or adopt policies to indemnify governmental employees or officers against personal liability for damages arising out of the performance of their duties, and to defend actions in which such damages are sought, in those instances in which a defense of sovereign or official immunity is unavailable. *Hendon v. DeKalb County*, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

General rule concerning extent of public officer's immunity. — It is the general rule that public officers, when acting in good faith and within the scope of their duty, are not liable to private action, but this immunity is not extended to them when they do things not authorized by law, or act in a wanton or malicious way and with intent to injure the property of another. *Haze*

Edwards Elec. Co. v. Turvey, 153 Ga. App. 173, 264 S.E.2d 706 (1980).

General rule concerning county immunity. — It is the general rule that a county when exercising governmental functions and acting as an agency of the state is not liable, in the absence of a statute imposing liability, for its failure to perform a duty or for its negligent performance of the duty, not even when the duty is imposed by statute; and there is no distinction in the application of this rule between the neglect to perform an act which ought to have been performed, and the performance of the duty in a negligent manner. *Miree v. U.S.*, 242 Ga. 126, 249 S.E.2d 573 (1978).

Defense and indemnification fund for personnel. — County's establishment and maintenance of the defense and indemnification fund for its personnel does not constitute a waiver of its sovereign immunity. *Hendon v. DeKalb County*, 203 Ga. App. 750, 417 S.E.2d 705, cert. denied, 203 Ga. App. 906, 417 S.E.2d 705 (1992).

RESEARCH REFERENCES

ALR. — Appealability, under collateral order doctrine, of order denying qualified immunity in 42 USCS § 1983 or Bivens

action for damages where claim for equitable relief is also pending — post-Harlow cases, 105 ALR Fed. 851.

ARTICLE 3

EMPLOYEES OPERATING STATE MOTOR VEHICLES

Cross references. — Motor vehicle accident insurance generally, Ch. 34, T. 33. Purchase and use of state motor vehicles, § 50-19-1 et seq.

45-9-40. Authorization generally; waiver of immunity from action.

The Department of Administrative Services, for and in behalf of all departments, boards, bureaus, agencies, and instrumentalities of the state, shall secure a blanket or group liability insurance policy which shall provide to state employees, up to the limit specified in the policy, protection from liability for damages arising out of the operation of any state owned motor vehicle, or any motor vehicle owned by any agency or instrumentality of the state, by any state employee during the course of his employment. Such policy shall in no manner provide for protection from liability to the state or any of its agencies or instrumentalities, and nothing contained in this article shall be construed in any manner whatsoever to waive the sovereign immunity of the state or any of its agencies or instrumentalities. (Ga. L. 1972, p. 347, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "state owned" was substituted for "state-owned" in the first sentence.

Law reviews. — For article advocating the overhaul of the doctrines of official and sovereign immunity in Georgia, see 29 Mercer L. Rev. 303 (1977).

For note analyzing sovereign immunity in this state and proposing implementation of a waiver scheme and creation of a court of claims pursuant to Ga. Const. 1976, Art. VI, Sec. V, Para. I (see Ga. Const. 1983, Art. I, Sec. II, Para. IX), see 27 Emory L.J. 717 (1978).

JUDICIAL DECISIONS

O.C.G.A. § 45-9-40 does not prohibit coverage of motor vehicles leased to state. *Alley v. Great Am. Ins. Co.*, 160 Ga. App. 597, 287 S.E.2d 613 (1981).

Legislative intent. — Construed together, the legislative intent of O.C.G.A. §§ 33-24-51 and 45-9-40 is to require that the state procure liability insurance for the operation of state-owned motor vehicles, but to permit procurement of similar insurance by counties and municipalities in their discretion. *Logue v. Wright*, 260 Ga. 206, 392 S.E.2d 235 (1990).

Waiver of immunity limited by terms of policy. — Where insurance coverage is obtained by a government entity, the government entity waives its sovereign immunity to the extent of such insurance coverage, however, where the plain terms of the policy

provide that there is no coverage for the particular claim, the policy does not create a waiver of sovereign immunity as to that claim. *Dugger v. Sprouse*, 257 Ga. 788, 364 S.E.2d 275 (1988).

No waiver of governmental immunity. — Although there may be applicable liability insurance in force pursuant to O.C.G.A. § 45-9-40, O.C.G.A. § 45-9-40 by its very terms precludes a finding of waiver of governmental immunity as to such insurance. *Hicks v. Shea*, 149 Ga. App. 396, 254 S.E.2d 511 (1979).

Where decedent was riding as a passenger in an automobile owned by Georgia Mental Health Institute being driven by its employee, and GMHI had insurance on the automobile; GMHI did not thereby waive governmental immunity to the extent of that

insurance. *Hicks v. Shea*, 149 Ga. App. 396, 254 S.E.2d 511 (1979).

Coverage of for-profit contractors and their employees was not precluded by

O.C.G.A. § 45-9-40. *American S. Ins. Co. v. Abbensett*, 232 Ga. App. 16, 501 S.E.2d 53 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Departmental employees, like other drivers, are liable for their ordinary negligence which causes injuries to nonguest passengers; the drivers would be solely responsible for their negligent acts beyond the limits of the state insurance policy. 1974 Op. Att'y Gen. No. 74-139.

State employees personally liable. — The state is not liable for motor vehicle incidents occurring while state employees transport parole violators, probationers, parolees, and others in the performance of their official

duties; state employees are personally liable for motor vehicle incidents, just as other citizens are. 1973 Op. Att'y Gen. No. 73-156.

The No Fault Act (now Georgia Motor Vehicle Accident Reparations Act) is not applicable to the state, and the Department of Administrative Services is not required or authorized to purchase a "no fault" liability insurance policy when it purchases a blanket vehicle liability insurance policy for state employees. 1975 Op. Att'y Gen. No. 75-115.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, *Automobile Insurance*, § 30. 43 Am. Jur. 2d, *Insurance*, § 717.

C.J.S. — 46 C.J.S., *Insurance*, §§ 1027, 1032, 1037, 1045 et seq.

ALR. — Application of financial responsibility or compulsory insurance laws to governmental vehicles or their operators, 87 ALR2d 1224.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties, 71 ALR3d 6.

45-9-40.1. Provision of automobile liability coverage to community service boards to protect from liability for damages arising from operation of state vehicles.

The Department of Administrative Services is authorized to provide automobile liability coverage to community service boards through the automobile policy of insurance provided for in Code Section 45-9-40 or through a separate business automobile liability policy. These policies will provide coverage to employees of county departments of health, county departments of family and children services, and community service boards, up to the limit specified in the policy, for protection from liability for damages arising out of the operation of any state owned or leased vehicle when such boards use these vehicles in the course of their employment. The commissioner of administrative services may provide the coverages, with the cost of such insurance being allocated to such boards and departments in accordance with the allocation formula provided for in Code Section 45-9-43 or by allocating the actual cost of the business automobile liability policy to such boards and departments. The Department of Human Resources must provide a central office to coordinate the

collection of underwriting data and premiums as required in subsection (c) of Code Section 45-9-1. (Code 1981, § 45-9-40.1, enacted by Ga. L. 1994, p. 1717, § 5.)

45-9-41. Persons authorized by Department of Corrections to operate vehicles.

The policy of insurance provided for in Code Section 45-9-40 may also provide to persons authorized by the Department of Corrections to operate state owned vehicles protection from liability for damages arising out of the operation of such vehicles during the course of such persons' authorized use of such vehicles. (Ga. L. 1973, p. 1296, § 1; Ga. L. 1985, p. 283, § 1.)

RESEARCH REFERENCES

ALR. — Application of financial responsibility or compulsory insurance laws to governmental vehicles or their operators, 87 ALR2d 1224.

45-9-42. Persons authorized by nonprofit agencies to operate vehicles.

(a) The policy of insurance provided for in Code Section 45-9-40 may also provide to nonprofit agencies and their employees, which agencies have contracted with the Department of Juvenile Justice, the Department of Transportation, or the Department of Human Resources to furnish certain services or have subcontracted with similar nonprofit agencies for the same, protection from liability for damages arising out of the authorized use of a state owned vehicle or a vehicle funded pursuant to subsection (a) of Code Section 49-2-13.1 by an employee of such agency during the course of such person's employment with such nonprofit agency, provided the cost of such insurance furnished to any such nonprofit agency and its employees shall be allocated to and paid by such agency.

(b) For the purpose of this Code section, "nonprofit agencies" means any nonprofit or charitable organization, association, corporation, partnership, or other entity. (Ga. L. 1978, p. 256, § 1; Ga. L. 1988, p. 310, § 1; Ga. L. 1990, p. 915, § 2; Ga. L. 1994, p. 307, § 1; Ga. L. 1997, p. 1453, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a hyphen was deleted from "state-owned".

RESEARCH REFERENCES

ALR. — Application of financial responsibility or compulsory insurance laws to governmental vehicles or their operators, 87 ALR2d 1224.

45-9-43. Allocation of cost of insurance among various state agencies.

The allocation of the cost of an insurance policy provided for in Code Section 45-9-40 among the various departments, boards, bureaus, agencies, and instrumentalities of the state shall be in accordance with the equitable distribution thereof as shall be determined by the Department of Administrative Services based as nearly as practicable upon the proportionate exposure to liability which each such department, board, bureau, agency, or instrumentality bears to the aggregate exposure to liability of all such departments, boards, bureaus, agencies, or instrumentalities of the state. (Ga. L. 1972, p. 347, § 2.)

ARTICLE 4**INDEMNIFICATION OF PUBLIC OFFICERS AND EMPLOYEES
GENERALLY****45-9-60. Indemnification of public officers or officials subjected to monetary liability authorized; issuance of opinion of Attorney General or Governor that liability not breach of duty.**

In the event that a public officer or official has a money judgment returned against him in an action or is otherwise subjected to monetary liability by an aggrieved party, by his bond carrier, or both as a result of an act of omission or commission of a subordinate employee of the public officer or official and in the event that said public officer or official shall, as a result of such action, be required to expend his personal moneys, said officer or official shall be indemnified out of funds otherwise available to the public official's or officer's department or office, provided that authorization for such indemnification payment by the department or office shall be contingent on issuance of an official opinion of the Attorney General declaring that the judgment against or liability of the public officer or official was not due to an act of omission or commission of the public officer or official which constituted a breach of a duty imposed by law on the officer or official. In the event that the Attorney General is the public official seeking indemnification under this article, the Governor shall make the determination as to whether or not the liability of the Attorney General was due to an act of omission or commission of the Attorney General which constituted a breach of a duty imposed by law. (Ga. L. 1975, p. 674, § 2; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 191.

C.J.S. — 64A C.J.S., Municipal Corporations, § 1575.

ALR. — Validity and construction of stat-

ute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties, 71 ALR3d 90.

Payment of attorney's services in defending action brought against officials individually as within power or obligation of public body, 47 ALR5th 535.

45-9-61. Benefit derived under article declared to be compensation.

Any benefit occasioned by a public officer or official by virtue of this article is declared to be and is a portion of the compensation due the public officer or official for the services rendered to the state. (Ga. L. 1975, p. 674, § 3.)

45-9-62. Applicability of article.

This article shall apply to:

(1) All public officers and officials of this state who hold state-wide offices and who are required by law to be bonded; and

(2) Alleged acts of omission or commission which occurred prior to July 1, 1976. (Ga. L. 1975, p. 674, §§ 1, 4.)

ARTICLE 4A

INDEMNIFICATION OF PUBLIC SCHOOL TEACHERS AND EMPLOYEES

Cross references. — Plan for public school teachers, § 20-2-880 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Article 5A as enacted by Ga. L. 2000, p. 768, § 3, was redesignated as Article 4A.

Editor's notes. — Ga. L. 2000, p. 768, § 3, provides that this article became effective

July 1, 2001, only upon ratification of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 2001) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

45-9-70. Purpose of article.

The purpose of this article is to provide by law for the indemnification with respect to the death or permanent disability of public school teachers and public school employees who are killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001. (Code 1981, § 45-9-70, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-100, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-70.

Law reviews. — For note on 2000 enactment of O.C.G.A. §§ 45-9-101 to 45-9-106, see 17 Ga. St. U.L. Rev. 270 (2000).

45-9-71. Definitions.

As used in this article, the term:

(1) “Act of violence” means a willful act of violence committed by a person other than a fellow public school teacher or public school employee.

(2) “Commission” means the Georgia Public School Personnel Indemnification Commission.

(3) “In the line of duty” means while on duty and performing services for and receiving compensation from the public school district which employs such public school teacher or public school employee.

(4) “Permanent disability” means disability due to:

(A) Loss of both eyes or blindness in both eyes with only light perception;

(B) Loss or loss of use of both hands;

(C) Loss or loss of use of both legs;

(D) Loss of a lower extremity or residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair; or

(E) Organic brain damage resulting from direct physical trauma incurred after July 1, 2001, which so affects the mental capacity as to preclude ability to function productively in any employment.

(5) “Public school employee” has the meaning provided by Code Section 20-2-910.

(6) “Public school teacher” has the meaning provided by Code Section 20-2-880. (Code 1981, § 45-9-71, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-71.
Code Section 28-9-5, in 2000, Code Section 45-9-101, as enacted by Ga. L. 2000, p. 768,

45-9-72. Establishment of indemnification program.

(a) There is established a program to provide for indemnification with respect to the death or permanent disability of any public school teacher or public school employee who is killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001.

(b) Such program shall be administered by the Georgia Public School Personnel Indemnification Commission. (Code 1981, § 45-9-72, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section Code Section 28-9-5, in 2000, Code Section 45-9-72.
45-9-102, as enacted by Ga. L. 2000, p. 768,

45-9-73. Indemnification commission created; composition; assignment to Department of Administrative Services for administrative purposes.

There is created the Georgia Public School Personnel Indemnification Commission which shall be composed of the Governor, the State School Superintendent, the Secretary of State, the Commissioner of Insurance, the chairperson of the State Board of Education, the commissioner of human resources, and one public school teacher and one public school employee to be appointed by the Governor and serve at the pleasure thereof. The Governor shall be the chairperson of the commission and the commission shall be assigned to the Department of Administrative Services for administrative purposes. (Code 1981, § 45-9-73, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section Code Section 28-9-5, in 2000, Code Section 45-9-73.
45-9-103, as enacted by Ga. L. 2000, p. 768,

45-9-74. Commission to promulgate rules and regulations; use of personnel and resources of other agencies.

The commission is authorized to promulgate rules and regulations relative to the program of indemnification. Such rules and regulations may provide for initial investigation of claims and the issuance of subpoenas to facilitate such investigation, special masters, hearings, procedures for applications for indemnification, and all other matters so as to enable the commission to carry out its duties fairly, properly, and equitably. The chairperson of the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties. (Code 1981, § 45-9-74, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section Code Section 28-9-5, in 2000, Code Section 45-9-74.
45-9-104, as enacted by Ga. L. 2000, p. 768,

45-9-75. Georgia Public School Personnel Indemnification Fund — Creation; general provisions.

There is created a fund to be known as the Georgia Public School Personnel Indemnification Fund. The custodian of the Georgia Public School Personnel Indemnification Fund shall be the Department of Administrative Services. The Department of Administrative Services shall

administer the Georgia Public School Personnel Indemnification Fund and may invest the resources of the fund in the same manner and fashion that an insurer authorized to issue contracts of life insurance is authorized to invest its resources. The Department of Administrative Services shall be further authorized to intermingle the resources of the Georgia Public School Personnel Indemnification Fund with the resources of any other funds or accounts which have similar restrictions on the investments which may be made with such funds; provided, however, that separate bookkeeping accounts on each such fund shall be maintained. (Code 1981, § 45-9-75, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-75.
Code Section 28-9-5, in 2000, Code Section 45-9-105, as enacted by Ga. L. 2000, p. 768,

45-9-76. Georgia Public School Personnel Indemnification Fund — Revenues from sale of license plates; authorization to accept funds from other sources.

The Georgia Public School Personnel Indemnification Fund shall consist of revenues derived from the sale of special and distinctive motor vehicle license plates honoring Georgia educators as provided by Code Section 40-2-86.5. In addition, the Department of Administrative Services is authorized to accept for deposit in the Georgia Public School Personnel Indemnification Fund any other funds from any other source. All revenue or other funds received by the Georgia Public School Personnel Indemnification Fund shall not lapse. (Code 1981, § 45-9-76, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-76.
Code Section 28-9-5, in 2000, Code Section 45-9-106, as enacted by Ga. L. 2000, p. 768,

45-9-77. Georgia Public School Personnel Indemnification Fund — Authority of Department of Administrative Services.

The Department of Administrative Services is authorized, subject to the limitations contained in this article:

(1) To pay the appropriate indemnification to the persons eligible for indemnification under this article or to the estate of such persons as provided in this article from the proceeds of the Georgia Public School Personnel Indemnification Fund;

(2) To make such payments as may be necessary to defray the expenses and costs incurred by the commission in administering this article; and

(3) With the approval of the commission, to utilize the resources of the Georgia Public School Personnel Indemnification Fund to purchase

insurance to provide for such indemnification. (Code 1981, § 45-9-77, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-77. Code Section 28-9-5, in 2000, Code Section 45-9-107, as enacted by Ga. L. 2000, p. 768,

45-9-78. Payment of indemnification for death or disability generally; designation of method of payment; procedure for making of payments.

(a) The indemnification shall be paid by the commission when a public school teacher or public school employee who in the line of duty:

(1) Is killed or receives bodily injury which results in death within 12 months thereafter, if such death occurs from an act of violence and if such death is not the result of suicide and if such bodily injury is not intentionally self-inflicted; or

(2) Is permanently disabled, if the permanent disability occurs from an act of violence and if the permanent disability is not intentionally self-inflicted.

(b) For any compensable claim filed under this article, payment shall be made as follows:

(1) In the case of permanent disability, the eligible disabled person pursuant to this article may elect payment of \$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; and

(2) In the case of death, payment shall be made to the estate of a person who is eligible for indemnification under this article as follows: the executor or administrator may elect payment of \$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(c) After determining that a public school teacher or public school employee has been killed or permanently disabled by an act of violence in the line of duty and that he or she or his or her estate beneficiary is entitled to indemnification under this article, the commission, within ten days after the end of the fiscal year in which such claim was filed and subject to the provisions of Code Section 45-9-79, shall forward a certified copy of the order granting such payment, which order shall include the person to whom such payment shall be made and the method of payment, to the commissioner of administrative services who is authorized to make the appropriate payments from funds made available for the purpose of

carrying out this article. (Code 1981, § 45-9-78, enacted by Ga. L. 2000, p. 768, § 2.)

<p>Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-108, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-78.</p>	<p>Pursuant to Code Section 28-9-5, in 2000, “Code Section 45-9-79” was substituted for “Code Section 45-9-109” in subsection (c).</p>
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45-9-79. Insufficient funds; procedure for making payments.

If the moneys provided by this article are not sufficient at any time to enable the commission to pay each person his or her benefits in full under this article, then those persons entitled to benefits whose claims were filed in the same fiscal year shall be paid an equal amount, if any, which, in the opinion of the commission, the fund may provide. In no such event shall the state or commission or any member of the commission be liable to any person for any deficiencies in payments under this article. (Code 1981, § 45-9-79, enacted by Ga. L. 2000, p. 768, § 2.)

<p>Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-109, as enacted by Ga. L. 2000, p. 768,</p>	<p>§ 2, was redesignated as Code Section 45-9-79.</p>
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45-9-79.1. Application for indemnification.

(a) An application for indemnification with respect to a claim filed under this article for permanent disability of a public school teacher or public school employee shall be submitted by that person unless the person is mentally incompetent, in which case the application may be made on such person’s behalf by the parent, spouse, guardian, or other authorized individual. An application for indemnification with respect to a claim filed under this article for the death of a public school teacher or public school employee shall be submitted by the individual authorized to administer the estate.

(b) An application for indemnification with respect to the death or permanent disability of a public school teacher or public school employee who is killed or permanently disabled by an act of violence in the line of duty on or after July 1, 2001, must be made within 24 months after the date of the death or disability. (Code 1981, § 45-9-79.1, enacted by Ga. L. 2000, p. 768, § 2.)

<p>Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-109.1, as enacted by Ga. L. 2000, p. 768,</p>	<p>§ 2, was redesignated as Code Section 45-9-79.1.</p>
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45-9-79.2. Indemnification not taxable.

It is the intent of the General Assembly that indemnification paid pursuant to this article shall not be taxable within this state for any purpose. (Code 1981, § 45-9-79.2, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-79.2, as enacted by Ga. L. 2000, p. 768.

45-9-79.3. Indemnification not to be awarded where penal violation caused or contributed to death or disability.

No indemnification shall be awarded to any person otherwise entitled thereto who violates a penal law of this state if such violation caused or contributed to the death or disability of the person. (Code 1981, § 45-9-79.3, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-79.3, as enacted by Ga. L. 2000, p. 768.

45-9-79.4. Annual report to General Assembly.

The commission shall annually file a report of its activities with the General Assembly, which report shall include the amount of funds paid under the program of indemnification. It shall also include a copy of each order providing for payment or a summary of each such order giving all pertinent details. (Code 1981, § 45-9-79.4, enacted by Ga. L. 2000, p. 768, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-79.4, as enacted by Ga. L. 2000, p. 768.

45-9-79.5. Giving of false information or testimony; liability to state.

(a) Any person who shall knowingly give false information or false testimony causing or intended to cause the payment of indemnification which would not otherwise be justified under this article shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony. (Code 1981, § 45-9-79.5, enacted by Ga. L. 2000, p. 768, § 2.)

Cross references. — Perjury, § 16-10-70. 45-9-109.5, as enacted by Ga. L. 2000, p. 768,

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-79.5, as enacted by Ga. L. 2000, p. 768.

ARTICLE 5

LAW ENFORCEMENT OFFICERS, FIREMEN, PRISON GUARDS, AND
PUBLICLY EMPLOYED EMERGENCY MEDICAL TECHNICIANS

Cross references. — Indemnification of law enforcement officers, firemen, prison guards, and publicly employed emergency medical technicians who are or were killed or permanently disabled in the line of duty, Ga. Const. 1983, Art. III, Sec. VI, Para. VI. Offenses of aggravated assault and aggravated battery on peace officers and correctional officers, §§ 16-5-21, 16-5-24. Educational grants to children of law enforcement officers, firemen, and prison guards killed or disabled in line of duty, § 20-3-450 et seq. Compensation of persons for injuries suffered while preventing crime or aiding offi-

ers of the law, § 28-5-100 et seq. Workers' compensation generally, Ch. 9, T. 34.

Editor's notes. — Ga. L. 2000, p. 283, § 3, designated Code Sections 45-9-80 through 45-9-91 of Article 5 as Part 1 of said Article, which became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters of the state at the 2000 November general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Liberal construction. — The Indemnification Law, O.C.G.A. § 45-9-80 et seq., is remedial in nature; its purpose is to confer a benefit upon survivors of those killed or permanently disabled while performing law enforcement (or other applicable) duties. With such a purpose, the law should be liberally construed. 1983 Op. Att'y Gen. No. 83-12.

Uniformed officers in Motor Carrier Certification and Enforcement Division. — Uniformed officers in Motor Carrier Certification and Enforcement Division, Georgia

Public Service Commission, are not entitled to receive indemnification pursuant to this article with respect to death occurring in line of duty. 1980 Op. Att'y Gen. No. 80-119.

Effect of Officers Standards and Training Act. — The General Assembly does not want the requirements of Police Officers Standards and Training Act (now the Georgia Peace Officer Standards and Training Act), O.C.G.A. § 35-8-1 et seq., grafted on to the Indemnification Law, O.C.G.A. § 45-9-80 et seq. 1983 Op. Att'y Gen. No. 83-12.

PART 1

GEORGIA STATE INDEMNIFICATION FUND

Editor's notes. — Ga. L. 2000, p. 283, § 3, designated Code Sections 45-9-80 through 45-9-91 of Article 5 as Part 1 of said Article, which became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters of the state at the 2000 November general election. The constitu-

tional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

Law reviews. — For note on 2000 amendments of O.C.G.A. §§ 45-9-80 to 45-9-91, see 17 Ga. St. U.L. Rev. 270 (2000).

45-9-80. Purpose of part.

The purpose of this part is to:

(1) Implement the constitutional amendment ratified November 4, 1976, authorizing the General Assembly to provide by law for the indemnification with respect to the death of law enforcement officers, firemen, or prison guards who are killed or have been killed in the line of duty subsequent to January 1, 1973;

(2) Provide by law for the indemnification with respect to the permanent disability of law enforcement officers, firemen, or prison guards who are permanently disabled or have been permanently disabled in the line of duty subsequent to January 1, 1973;

(3) Provide by law for the indemnification with respect to the death or permanent disability of publicly employed emergency medical technicians who are killed or permanently disabled or who have been killed or permanently disabled in the line of duty subsequent to January 1, 1977;

(4) Provide by law for the indemnification with respect to the death or permanent disability of emergency management rescue specialists who are killed or permanently disabled in the line of duty on or after January 1, 1991; and

(5) Provide by law for the indemnification with respect to the death or permanent disability of state highway employees who are killed or permanently disabled in the line of duty on or after January 1, 1990. (Ga. L. 1978, p. 1914, § 1; Ga. L. 1980, p. 700, § 1; Ga. L. 1987, p. 822, § 1; Ga. L. 1991, p. 1312, § 1; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 1259, § 1.)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” in the introductory paragraph.

The 2002 amendment, effective July 1, 2002, deleted “and” at the end of paragraph (3), substituted “; and” for a period at the end of paragraph (4); and added paragraph (5).

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act [which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and 45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this

Act as a whole would not have been adopted had any provision not been included.”

Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provides that the 2000 amendment became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

Administrative rules and regulations. — Indemnification, Official Compilation of Rules and Regulations of State of Georgia, Rules of Georgia State Indemnification Commission, Chapters 292-1 through 292-6.

45-9-81. Definitions.

As used in this part, the term:

(1) “Commission” means the Georgia State Indemnification Commission.

(2) "Emergency management rescue specialist" means any person licensed as an emergency management rescue specialist pursuant to Code Section 38-3-36.

(3) "Emergency medical technician" includes only persons who:

(A) Are certified as emergency medical technicians, paramedics, or cardiac technicians under Chapter 11 of Title 31; and

(B) Are employed in the capacity for which they are so certified by a department, agency, authority, or other instrumentality of state or local government.

(4) (A) "Firefighter" or "fireman" means any person who is employed as a professional firefighter on a full-time basis of at least 40 hours per week by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(B) "Firefighter" or "fireman" shall also mean any individual serving as an officially recognized or designated member of a legally organized volunteer fire department who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(C) "Firefighter" or "fireman" shall also mean any individual employed by a person or corporation which has a contract with a municipal corporation or county to provide fire prevention and fire-fighting services to such municipal corporation or county and any such individual is employed on a full-time basis of at least 40 hours per week and has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal or county fire prevention codes, enforcing any municipal or county ordinances pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(5) "In the line of duty" means:

(A) With respect to an emergency medical technician, while on duty and when responding to or returning from an emergency or performing duties at the scene of an emergency or transporting a person to a medical facility for emergency treatment or returning therefrom;

(B) With respect to a firefighter, while on duty and when responding to or returning from a fire or other emergency or performing duties during any fire or other emergency or performing duties intended to protect life and property;

(C) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement and fire service agency which employs such officer or firefighter, while off duty when responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer's or firefighter's death or bodily injury causing permanent disability shall not be considered in the line of duty unless the officer or firefighter has left the scope of his or her employment for the private employer for the direct purpose of enforcing or attempting to enforce fire service, the criminal or traffic laws, preserving or attempting to preserve public order, protecting or attempting to protect life or property, performing active state service as a member of the Georgia National Guard, preventing or attempting to prevent a crime, detecting or attempting to detect crime, or investigating or attempting to investigate crime. The determination that a law enforcement officer or firefighter was killed or permanently disabled in the line of duty and is entitled to indemnification pursuant to this part shall not be considered in the determination of the entitlement of such officer to workers' compensation, disability, health, or other benefits from such officer's or firefighter's public or private employer;

(D) With respect to a prison guard, while on duty and performing services for and receiving compensation from the public agency which employs such prison guard; or

(E) With respect to a state highway employee, while on duty and performing any work necessary for the construction, maintenance, or operation of a roadway on or within the public roads of the state as defined in paragraph (24) of Code Section 32-1-3 when such employee is killed or permanently disabled as the result of working under hazardous conditions in close proximity to moving traffic or equipment.

(6) "Law enforcement officer" means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time or part-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes the employees designated by the

commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision. Such term also includes law enforcement officers of the Department of Motor Vehicle Safety. Such term also includes members of the Georgia National Guard, the composition of which is set forth in Code Section 38-2-3, who have been called into active state service by the Governor.

(7) "Permanent disability" means disability due to:

(A) Loss of both eyes or blindness in both eyes with only light perception;

(B) Loss or loss of use of both hands;

(C) Loss or loss of use of both legs;

(D) Loss of a lower extremity or residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without resort to a wheelchair; or

(E) Organic brain damage resulting from direct physical trauma incurred after January 1, 1973, which so affects the mental capacity as to preclude ability to function productively in any employment.

(8) "Prison guard" means any person employed by the state or any political subdivision thereof whose principal duties relate to the supervision and incarceration of persons accused or convicted of the violation of the criminal laws of this state or any political subdivision thereof. Such term shall also mean any probation supervisor or parole officer who is required to be certified under Chapter 8 of Title 35, the "Georgia Peace Officer Standards and Training Act," and whose principal duties directly relate to the supervision of adult probationers or adult parolees. Such term also means any person employed by the state or any political subdivision thereof whose principal duties include the supervision of youth who are charged with or adjudicated for an act which if committed by adults would be considered a crime.

(9) "State highway employee" means an employee of the Georgia Department of Transportation who receives compensation directly therefrom and regularly engages in duties necessary for the construction, maintenance, or operation of roadways on or within the public roads of this state as defined in paragraph (24) of Code Section 32-1-3. (Ga. L. 1978, p. 1914, § 2; Ga. L. 1980, p. 700, § 2; Ga. L. 1981, p. 477, § 1; Ga. L. 1983, p. 651, § 1; Ga. L. 1983, p. 1303, § 1; Ga. L. 1983, p. 1469, § 1; Ga. L. 1984, p. 762, §§ 1, 2; Ga. L. 1986, p. 1478, § 1; Ga. L. 1987, p. 822, § 2; Ga. L. 1988, p. 1923, § 10; Ga. L. 1990, p. 488, § 1; Ga. L. 1990, p.

646, § 1; Ga. L. 1991, p. 771, § 1; Ga. L. 1991, p. 1312, § 2; Ga. L. 1992, p. 1983, § 22; Ga. L. 1994, p. 1149, § 1; Ga. L. 1995, p. 877, § 1; Ga. L. 1996, p. 950, § 1; Ga. L. 1997, p. 1453, §§ 1, 2; Ga. L. 1998, p. 264, §§ 2, 3; Ga. L. 2000, p. 283, § 1; Ga. L. 2000, p. 951, § 12-10; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 1; Ga. L. 2002, p. 1259, §§ 2, 3.)

The 2000 amendments. — The first 2000 amendment, effective July 1, 2001, substituted “part” for “article” in the introductory paragraph and in subparagraph (5)(C). The second 2000 amendment, effective July 1, 2001, in paragraph (6), substituted “. With respect to periods of time prior to July 1, 2001, such term also includes” for “and” and inserted the language beginning “; and on and after” and ending “Motor Vehicle Safety”.

The 2002 amendments. — The first 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted “Such” for “With respect to periods of time prior to July 1, 2001, such term also includes employees designated and delegated law enforcement powers by the Public Service Commission pursuant to Code Sections 46-7-28 and 46-11-6, which personnel have the duty to enforce the laws relating to motor carriers and the transportation of hazardous materials; and on and after July 1, 2001, such” in the third sentence in paragraph (6). The second 2002 amendment, effective July 1, 2002, throughout this Code section, substituted “firefighters” for “firemen”, substituted “firefighter” for “fireman”, and substituted “firefighter’s” for “fireman’s”; and substituted “‘Firefighter’ or ‘fireman’” for “‘Fireman’” at the beginning of subparagraphs (4)(A), (4)(B), and (4)(C). The third 2002 amendment, effective July 1, 2002, made identical changes as the second 2002 amendment, and in paragraph (5), deleted “or” from the end of subparagraph (5)(C), substituted “; or” for a period at the end of subparagraph (5)(D), and added subparagraph (5)(E); and added paragraph (9).

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and 45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included.”

Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the first 2000 amendment became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

Ga. L. 2000, p. 951, § 13-1, not codified by the General Assembly, provided that the second 2000 Act which amended this Code section became fully effective July 1, 2001, but authorized administrative action commencing April 28, 2000, for purposes of appointing certain officials, adopting rules and regulations, employing personnel, and preparing for and phasing in full implementation; provided, however, that the Governor may by executive order extend the date for full implementation of the Act to no later than July 1, 2003. In accordance with an executive order issued June 29, 2001, by the Governor, the amendment of this Code section by Ga. L. 2000, p. 951, became fully effective July 1, 2001.

JUDICIAL DECISIONS

Fact that appellants may have been employees in their position as city policemen does not necessarily contraindicate their sta-

tus as officeholders in that same position. *Fowler v. Mitcham*, 249 Ga. 400, 291 S.E.2d 515 (1982).

OPINIONS OF THE ATTORNEY GENERAL

District attorney does not fit under any definition of law enforcement officer or peace officer in this state. 1980 Op. Att’y Gen. No. U80-33.

State court marshals. — A determination of whether state court marshals may be

considered “law enforcement officers” for purposes of O.C.G.A. § 45-9-80, et seq., the State Indemnification Act, must be made on a county-by-county basis. 1983 Op. Att’y Gen. No. 83-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d, Indemnity, § 17.

45-9-82. Establishment of indemnification program.

(a) There is established a program to provide for indemnification with respect to the:

(1) Death of any law enforcement officer, firefighter, or prison guard who is or has been killed in the line of duty subsequent to January 1, 1973;

(2) Permanent disability of any law enforcement officer, firefighter, or prison guard who is or has been permanently disabled in the line of duty subsequent to January 1, 1973;

(3) Death or permanent disability of any emergency medical technician who is killed or permanently disabled or who has been killed or permanently disabled in the line of duty subsequent to January 1, 1977;

(4) Death or permanent disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991; and

(5) Death or permanent disability of any state highway employee who is killed or permanently disabled in the line of duty on or after January 1, 1990.

(b) Such program shall be administered by the Georgia State Indemnification Commission. (Ga. L. 1978, p. 1914, § 3; Ga. L. 1980, p. 700, § 3; Ga. L. 1987, p. 822, § 3; Ga. L. 1991, p. 1312, § 3; Ga. L. 2002, p. 660, § 4(16); Ga. L. 2002, p. 1259, §§ 4, 11(16).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” in paragraphs (a)(1) and (a)(2). The second 2002 amendment, effective July 1, 2002, made identical changes as the first 2002 amendment and, in subsection (a), deleted “and” from the end of paragraph (a)(3), substi-

tuted “; and” for a period at the end of paragraph (a)(4), and added paragraph (a)(5).

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act [which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and

45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no

effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included."

45-9-83. Indemnification commission created; composition; officers; assignment to Department of Administrative Services for administrative purposes.

There is created the Georgia State Indemnification Commission which shall be composed of the Governor, the Secretary of State, the Commissioner of Insurance, the commissioner of public safety, the commissioner of transportation, the commissioner of corrections, the commissioner of human resources, the president of the Peace Officers' Association of Georgia, and the president of the Georgia State Firemen's Association. The Governor shall be the chairperson of the commission and the commission shall be assigned to the Department of Administrative Services for administrative purposes. (Ga. L. 1978, p. 1914, § 4; Ga. L. 1984, p. 762, § 3; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1987, p. 822, § 4; Ga. L. 1988, p. 13, § 45; Ga. L. 2002, p. 1259, § 5.)

The 2002 amendment, effective July 1, 2002, inserted "the commissioner of transportation," in the middle of the first sentence and substituted "chairperson" for "chairman" in the middle of the second sentence.

Editor's notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: "If any provision of this Act

[which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and 45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included."

45-9-84. Commission to promulgate rules and regulations; use of personnel and resources of other agencies.

The commission is authorized to promulgate rules and regulations relative to the program of indemnification. Such rules and regulations may provide for initial investigation of claims and the issuance of subpoenas to facilitate such investigation, special masters, hearings, procedures for applications for indemnification, and all other matters so as to enable the commission to carry out its duties fairly, properly, and equitably. The chairman of the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties. (Ga. L. 1978, p. 1914, § 6; Ga. L. 1981, p. 477, § 3.)

45-9-84.1. Georgia State Indemnification Fund — Creation; investment fund paid over to Office of Treasury and Fiscal Services.

There is created a fund to be known as the Georgia State Indemnification Fund. The custodian of the Georgia State Indemnification Fund shall be

the Department of Administrative Services. The Department of Administrative Services shall administer the Georgia State Indemnification Fund. Any amounts held by the Georgia State Indemnification Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the Georgia State Indemnification Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from such investments shall accrue to the Georgia State Indemnification Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services. (Ga. L. 1981, p. 477, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1993, p. 1402, § 19; Ga. L. 2000, p. 1474, § 6.)

The 2000 amendment, effective May 1, 2000, deleted “and may invest the resources of the fund in the same manner and fashion that an insurer authorized to issue contracts of life insurance is authorized to invest its resources.” following “Indemnification Fund” at the end of the third sentence, and substituted the present fourth through ninth sentences for “The Department of Adminis-

trative Services shall be further authorized to intermingle the resources of the Georgia State Indemnification Fund with the resources of any other funds or accounts which have similar restrictions on the investments which may be made with such funds; provided, however, that separate bookkeeping accounts on each such fund shall be maintained.”

45-9-84.2. Georgia State Indemnification Fund — Authorization for appropriation of moneys to the fund; moneys from other sources.

The General Assembly is authorized to appropriate funds to be placed in the Georgia State Indemnification Fund for the purpose of providing for indemnification with respect to the death or disability of any law enforcement officer, firefighter, or prison guard who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1973, the death or disability of any emergency medical technician who is killed or permanently disabled or has been killed or permanently disabled in the line of duty subsequent to January 1, 1977, the death or disability of any emergency management rescue specialist who is killed or permanently disabled on or after January 1, 1991, and the death or disability of any state highway employee who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1990, as well as defraying the expenses and costs incurred by the commission in the administration of this part. In addition, the Department of Administrative Services is authorized to accept for deposit in the Georgia State Indemnification Fund any other funds from any other source. All funds appropriated to the Georgia State Indemnifi-

cation Fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated and shall not lapse. (Ga. L. 1981, p. 477, § 2; Ga. L. 1987, p. 822, § 5; Ga. L. 1991, p. 1312, § 4; Ga. L. 1993, p. 1402, § 19; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 660, § 4(17); Ga. L. 2002, p. 1259, §§ 6, 11(17).)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” at the end of the first sentence.

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” in the first sentence. The second 2002 amendment, effective July 1, 2002, made identical changes as the first 2002 amendment, and in the first sentence, deleted “and” preceding “the death” near the middle and inserted “and the death or disability of any state highway employee who is or has been killed or permanently disabled in the line of duty subsequent to January 1, 1990,” near the end.

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act

[which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and 45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included.”

Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the 2000 amendment became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

45-9-84.3. Georgia State Indemnification Fund — Authority of Department of Administrative Services as to payments from fund.

The Department of Administrative Services is authorized, subject to the limitations contained in this part:

(1) To pay the appropriate indemnification to the persons eligible for indemnification under this part or to the estate of such persons as provided in this part from the proceeds of the Georgia State Indemnification Fund;

(2) To make such payments as may be necessary to defray the expenses and costs incurred by the commission in administering this part; and

(3) With the approval of the commission, to utilize the resources of the Georgia State Indemnification Fund to purchase insurance to provide for such indemnification. (Ga. L. 1981, p. 477, § 2; Ga. L. 1993, p. 1402, § 19; Ga. L. 1995, p. 877, § 2; Ga. L. 2000, p. 283, § 1.)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” in four places throughout this Code section.

Editor’s notes. — Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the 2000 amendment became effective July 1, 2001, only upon ratification

of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

45-9-85. Payment of indemnification for death or disability generally; beneficiary; designation of method of payment; procedure for making of payments.

(a) The indemnification shall be paid by the commission when a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, prison guard, or state highway employee who in the line of duty:

(1) Is killed or receives bodily injury which results in death within 12 months thereafter, if such death does not occur from natural causes while performing routine duties which would not be strenuous or dangerous if performed by citizens who are not law enforcement officers, firefighters, emergency medical technicians, emergency management rescue specialists, prison guards, or state highway employees, and if such death is not the result of suicide and if such bodily injury is not intentionally self-inflicted; or

(2) Is permanently disabled, if the permanent disability does not occur from natural causes while performing routine duties which would not be strenuous or dangerous if performed by citizens who are not law enforcement officers, firefighters, emergency medical technicians, emergency management rescue specialists, prison guards, or state highway employees, and if the permanent disability is not intentionally self-inflicted.

(b) (1) Notwithstanding any provision of this part to the contrary, for any compensable claim filed on or after July 1, 2002, payment shall be made as follows:

(A) (i) Except as otherwise provided by division (ii) of this subparagraph, in the case of permanent disability, the eligible disabled person pursuant to this part may elect payment of \$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; or

(ii) In the case of a state highway employee permanently disabled on or after January 1, 1990, the eligible disabled person pursuant to this article may elect payment of \$25,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$25,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; and

(B) (i) Except as otherwise provided in division (ii) of this subparagraph, in the case of death, payment shall be made to the estate of a person who is eligible for indemnification under this part as follows: the executor or administrator may elect payment of

\$75,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$75,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum; or

(ii) In the case of a state highway employee killed on or after January 1, 1990, payment shall be made to the estate of a person who is eligible for indemnification under this article as follows: the executor or administrator may elect payment of \$25,000.00 in equal installments over a period of five years or a payment in lump sum which shall consist of \$25,000.00 reduced to its present value upon the basis of interest calculated at the rate of 6 percent per annum.

(2) With respect to law enforcement officers, firefighters, or prison guards who were killed prior to April 5, 1978, or who were permanently disabled prior to January 1, 1981, and who are entitled to indemnification under this part, payment shall be made in lump sum to the estate, in the case of death, or, in the case of permanent disability, to the person disabled.

(3) With respect to emergency medical technicians who were killed or permanently disabled prior to July 1, 1987, and who are entitled to indemnification under this part, payment shall be made in lump sum to the estate, in the case of death, or, in the case of permanent disability, to the person disabled.

(c) After determining that a law enforcement officer, firefighter, emergency medical technician, emergency management rescue specialist, prison guard, or state highway employee has been killed or permanently disabled in the line of duty and that he or she or his or her estate beneficiary is entitled to indemnification under this part, the commission, within ten days after such determination, shall forward a certified copy of the order granting such payment, which order shall include the person to whom such payment shall be made and the method of payment, to the commissioner of administrative services who is authorized to make the appropriate payments from funds appropriated or otherwise made available for the purpose of carrying out this part. (Ga. L. 1978, p. 1914, § 5; Ga. L. 1980, p. 700, § 4; Ga. L. 1987, p. 822, § 6; Ga. L. 1991, p. 1312, § 5; Ga. L. 1993, p. 1402, § 19; Ga. L. 1994, p. 97, § 45; Ga. L. 1995, p. 877, § 3; Ga. L. 2000, p. 283, § 1; Ga. L. 2002, p. 660, § 4(18); Ga. L. 2002, p. 1259, §§ 7, 11(18).)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” in paragraph (b)(2) and subsection (c).

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, throughout this Code section, substituted “firefighter” for “fireman” in subsections (a) and (c) and substituted “firefighters” for “firemen” in paragraphs (a)(1), (a)(2), and

(b)(2). The second 2002 amendment, effective July 1, 2002, made identical changes as the first 2002 amendment, and substituted “prison guard, or state highway employee” for “or prison guard” in the introductory paragraph of subsection (a) and near the beginning of subsection (c); substituted “prison guards, or state highway employees,” for “or prison guards” near the end of

paragraphs (a)(1) and (a)(2); and, in subsection (b), in paragraph (1), substituted “July 1, 2002,” for “July 1, 1995,” in the introductory paragraph, designated the existing provisions of subparagraphs (b)(1)(A) and (b)(1)(B) as divisions (b)(1)(A)(i) and (b)(1)(B)(i), in divisions (b)(1)(A)(i) and (b)(1)(B)(i), substituted “Except as otherwise provided by division (ii) of this subparagraph, in” for “In” and substituted “or” for “and”, and added divisions (b)(1)(A)(ii) and (b)(1)(B)(ii).

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act [which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and

45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included.”

Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the 2000 amendment became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

OPINIONS OF THE ATTORNEY GENERAL

Law enforcement officers. — A person who ostensibly appears to be a law enforcement officer and who is killed while on duty, but who has not complied with the “Peace

Officer Standards and Training Act”, is nonetheless a law enforcement officer for the purposes of state indemnification. 1983 Op. Att’y Gen. No. 83-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d, Indemnity, §§ 1, 2.

C.J.S. — 42 C.J.S., Indemnity, § 3.

45-9-86. Application for indemnification.

(a) An application for indemnification with respect to a claim filed on or after July 1, 2002, for permanent disability of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by that person unless the person is mentally incompetent, in which case the application may be made on such person’s behalf by the parent, spouse, guardian, or other authorized individual. An application for indemnification with respect to a claim filed on or after July 1, 2002, for the death of a law enforcement officer, firefighter, prison guard, emergency medical technician, emergency management rescue specialist, or state highway employee shall be submitted by the individual authorized to administer the estate.

(b) An application for indemnification relative to any law enforcement officer, firefighter, or prison guard killed in the line of duty subsequent to January 1, 1973, and prior to January 1, 1981, must be made prior to January 1, 1982. An application for indemnification relative to any law enforcement officer, firefighter, or prison guard killed in the line of duty on and after January 1, 1981, and prior to January 1, 1984, must be made prior

to January 1, 1986. An application for indemnification relative to any law enforcement officer, firefighter, or prison guard killed in the line of duty on or after January 1, 1984, must be made within 24 months from the death of such law enforcement officer, firefighter, or prison guard.

(c) An application for indemnification relative to any law enforcement officer, firefighter, or prison guard permanently disabled in the line of duty subsequent to January 1, 1973, and prior to January 1, 1979, must be made prior to January 1, 1989. An application for indemnification relative to any law enforcement officer, firefighter, or prison guard permanently disabled in the line of duty subsequent to January 1, 1979, and prior to January 1, 1980, must be made prior to January 1, 1982. An application for indemnification relative to any law enforcement officer, firefighter, or prison guard permanently disabled in the line of duty on and after January 1, 1980, and prior to January 1, 1984, must be made prior to January 1, 1992. An application for indemnification relative to a permanent disability occurring on or after January 1, 1984, must be made within 24 months of the date the permanent disability occurred.

(d) An application for indemnification with respect to the death or permanent disability of an emergency medical technician who was killed or permanently disabled subsequent to January 1, 1977, and prior to January 1, 1987, must be made prior to January 1, 1989. An application for indemnification with respect to the death or permanent disability of an emergency medical technician who is killed or permanently disabled in the line of duty on or after January 1, 1987, must be made within 24 months after the date of death or disability.

(e) An application for indemnification with respect to the death or permanent disability of an emergency management rescue specialist who is killed or permanently disabled in the line of duty on or after January 1, 1991, must be made within 24 months after the date of the death or disability.

(f) An application for indemnification with respect to the death or permanent disability of a member of the Georgia National Guard included in the definition of a law enforcement officer pursuant to paragraph (6) of Code Section 45-9-81 who is killed or permanently disabled in the line of duty while in active state service on or after July 1, 1995, must be made within 24 months after the date of the death or disability.

(g) (1) An application for indemnification with respect to the death or permanent disability of a state highway employee who is killed or permanently disabled in the line of duty on or after January 1, 1990, and prior to July 1, 2002, must be made prior to July 1, 2004.

(2) An application for indemnification with respect to the death or permanent disability of a state highway employee who is killed or permanently disabled in the line of duty on or after July 1, 2002, must be

made within 24 months after the date of the death or disability. (Ga. L. 1978, p. 1914, § 7; Ga. L. 1980, p. 700, § 5; Ga. L. 1981, p. 477, § 4; Ga. L. 1985, p. 413, § 1; Ga. L. 1987, p. 822, § 7; Ga. L. 1991, p. 771, § 2; Ga. L. 1991, p. 1312, § 6; Ga. L. 1995, p. 877, §§ 4, 5; Ga. L. 2002, p. 660, § 4(19); Ga. L. 2002, p. 1259, §§ 8, 11(19).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” throughout subsections (a) through (c). The second 2002 amendment, effective July 1, 2002, made identical changes as the first 2002 amendment, and in subsection (a), substituted “July 1, 2002,” for “July 1, 1995,” twice, deleted “or” preceding “emergency management”, and inserted “, or state highway employee” twice, and added subsection (g).

Editor’s notes. — Ga. L. 1987, p. 822, § 8, not codified by the General Assembly, provided that: “If any provision of this Act which amended Code Sections 45-9-80 through 45-9-83, 45-9-84.2, 45-9-85, and 45-9-86] is held to be invalid or inoperative for any reason, the remaining provisions of this Act shall be deemed to be void and of no effect it being the legislative intent that this Act as a whole would not have been adopted had any provision not been included.”

RESEARCH REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d, Indemnity, § 50.

C.J.S. — 42 C.J.S., Indemnity, §§ 11, 53.

45-9-86.1. Time limit on applications for indemnification relative to death of part-time law enforcement officer killed in line of duty.

An application for indemnification relative to any part-time law enforcement officer killed in the line of duty subsequent to January 1, 1973, and prior to March 24, 1981, must be made no later than 12 months after March 24, 1981. An application for indemnification relative to any part-time law enforcement officer killed in the line of duty on or after March 24, 1981, must be made within 12 months after the death of such part-time law enforcement officer. (Ga. L. 1981, p. 477, § 5.)

45-9-86.2. Time limitation on applications for indemnification relative to law enforcement officers, firefighters, and prison guards permanently disabled due to organic brain damage.

An application for indemnification relative to any law enforcement officer, firefighter, or prison guard permanently disabled as a result of organic brain damage subsequent to January 1, 1979, and prior to January 1, 1983, must be made prior to January 1, 1984. (Code 1981, § 45-9-86.2, enacted by Ga. L. 1983, p. 651, § 2; Ga. L. 2002, p. 660, § 4(20); Ga. L. 2002, p. 1259, § 11(20).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” near the

beginning. The second 2002 amendment, effective July 1, 2002, made identical changes.

45-9-87. State subrogated to cause of action for death or disability upon payment of indemnification; Attorney General to bring action for recovery.

Reserved. Repealed by Ga. L. 1989, p. 1244, § 1, effective April 13, 1989.

Editor's notes. — This Code section was based on Ga. L. 1978, p. 1914, § 9; Ga. L. 1980, p. 700, § 6.

45-9-88. Indemnification not taxable.

It is the intent of the General Assembly that indemnification paid pursuant to this part shall not be taxable within this state for any purpose. (Ga. L. 1980, p. 1343, § 1; Ga. L. 2000, p. 283, § 1.)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” near the middle of this Code section.

Editor's notes. — Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the 2000 amendment became effective July 1, 2001, only upon ratification

of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

45-9-89. Indemnification not to be awarded where penal violation caused or contributed to death or disability.

No indemnification shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the death or disability of the officer. (Ga. L. 1978, p. 1914, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 41 Am. Jur. 2d, Indemnity, § 11.

C.J.S. — 42 C.J.S., Indemnity, § 8.

ALR. — Misconduct as affecting right to pension or retention of position in retirement system, 76 ALR2d 566.

45-9-90. Annual report to General Assembly.

The commission shall annually file a report of its activities with the General Assembly, which report shall include the amount of funds paid under the program of indemnification. It shall also include a copy of each order providing for payment or a summary of each such order giving all pertinent details. (Ga. L. 1978, p. 1914, § 10.)

45-9-91. Giving of false information or testimony.

(a) Any person who shall knowingly give false information or false testimony causing or intended to cause the payment of indemnification

which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony. (Ga. L. 1978, p. 1914, § 11; Ga. L. 2000, p. 283, § 1.)

The 2000 amendment, effective July 1, 2001, substituted “part” for “article” near the end of subsection (a).

Editor’s notes. — Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that the 2000 amendment became effective July 1, 2001, only upon ratification

of a constitutional amendment by the voters at the November 2000 general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Extortion, § 257.

PART 2

TEMPORARY DISABILITY COMPENSATION PROGRAM

Editor’s notes. — Ga. L. 2000, p. 283, § 3, not codified by the General Assembly, provided that this part became effective July 1, 2001, only upon ratification of a constitutional amendment by the voters at the 2000

November general election. The constitutional amendment (Ga. L. 2000, p. 1999) was approved by a majority of the qualified voters voting at the general election held on November 7, 2000.

45-9-100.

Reserved.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-100, as enacted by Ga. L. 2000, p. 768,

§ 2, was redesignated as Code Section 45-9-70, and the Code Section 45-9-100 designation was reserved.

45-9-101. Purpose.

The purpose of this part is to implement the constitutional amendment ratified November 7, 2000, authorizing the General Assembly to provide a program of compensation for law enforcement officers who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty and caused by a willful act of violence and for firefighters who become physically disabled, but not permanently disabled, as a result of physical injury incurred in the line of duty while fighting a fire, which program shall entitle an injured law enforcement officer or firefighter to receive monthly compensation from the state in an amount equal to such person’s regular compensation for the period of time

that the law enforcement officer or firefighter is physically unable to perform the duties of his or her employment, not exceeding 12 months, and to provide certain exceptions and limitations with respect to such program of compensation. (Code 1981, § 45-9-101, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(21); Ga. L. 2002, p. 1259, § 11(21).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” twice and substituted “firefighters” for “firemen”. The second 2002 amendment, effective July 1, 2002, made identical changes.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-101, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-71.

45-9-102. Definitions.

As used in this part, the term:

(1) “Commission” means the Georgia State Indemnification Commission created in Code Section 45-9-83.

(2) “Firefighter” or “fireman” means any person who is employed as a professional firefighter on a full-time basis by any municipal, county, or state government fire department employing three or more firefighters and who has the responsibility of preventing and suppressing fires, protecting life and property, enforcing municipal, county, and state fire prevention codes, enforcing any law pertaining to the prevention and control of fires or who performs any acts or actions while on duty or when responding to a fire or emergency during any fire or other emergency or while performing duties intended to protect life and property.

(3) “Full-time” means an employee who regularly works 30 hours or more each week.

(4) “In the line of duty” means:

(A) With respect to a firefighter, while on duty and performing duties during any fire or other emergency or performing duties intended to protect life and property; or

(B) With respect to a law enforcement officer or firefighter, while on duty and performing services for and receiving compensation from the law enforcement or fire service agency which employs such officer or firefighter, while off duty and responding to any situation which would save a life or preserve the peace, or while preventing or attempting to prevent the commission of a crime or fire. A law enforcement officer or firefighter who is performing duties for and receiving compensation from a private employer at the time of such officer’s or firefighter’s bodily injury, but not permanent disability, shall not be considered in the line of duty unless the officer or firefighter has left the scope of his or her employment for the private employer for the direct purpose of

enforcing or attempting to enforce fire service, the criminal or traffic laws, preserving or attempting to preserve public order, protecting or attempting to protect life or property, preventing or attempting to prevent a crime, detecting or attempting to detect crime, or investigating or attempting to investigate crime. The determination that a law enforcement officer or firefighter was disabled in the line of duty and is entitled to compensation pursuant to this part shall not be considered in the determination of the entitlement of such officer to workers' compensation, disability, health, or other benefits from such officer's or firefighter's public or private employer.

(5) "Injured in the line of duty" means an injury which arises out of or in the course of employment in the line of duty. Going to or from work shall not be considered in the line of duty.

(6) "Law enforcement officer" means any agent or officer of this state, or a political subdivision or municipality thereof, who, as a full-time employee, is vested either expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws and whose duties include the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime. Such term also includes prison guards as defined under Code Section 45-9-81 and the employees designated by the commissioner of juvenile justice of the Department of Juvenile Justice pursuant to paragraph (2) of subsection (i) of Code Section 49-4A-8, which employees have the duty to investigate and apprehend delinquent and unruly children who have escaped from a facility under the jurisdiction of the Department of Juvenile Justice or who have broken the conditions of supervision and employees designated and delegated law enforcement powers by the commissioner of motor vehicle safety, which personnel have the duty to enforce the laws relating to motor carriers and the transportation of hazardous materials. (Code 1981, § 45-9-102, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 2; Ga. L. 2002, p. 1259, § 9.)

The 2002 amendments. — The first 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "commissioner of motor vehicle safety" for "Public Service Commission pursuant to Code Sections 46-7-28 and 46-11-6" near the end of the last sentence in paragraph (6). The second 2002 amendment, effective July 1, 2002, throughout this Code section, substituted "firefighters" for "firemen", substituted "firefighter" for "fireman", and substituted "firefighter's"

for "fireman's"; and substituted "'Firefighter' or 'fireman'" for "Fireman" at the beginning of paragraph (2). The third 2002 amendment, effective July 1, 2002, made identical changes as the first and second 2002 amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-102, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-72.

45-9-103. Payment of compensation; 12 month limitation; benefits subordinate to workers' compensation benefits.

(a) Any law enforcement officer who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty and caused by a willful act of violence committed by a person other than a fellow employee shall be entitled to receive compensation as provided in this Code section. Any firefighter who becomes physically disabled, but not permanently disabled, on or subsequent to July 1, 2001, as a result of a physical injury incurred in the line of duty while fighting a fire shall be entitled to receive compensation as provided in this Code section. The compensation shall be paid to eligible applicants by the commission from funds appropriated to the commission for such purpose.

(b) Except as otherwise provided in this part, any law enforcement officer or firefighter injured in the line of duty as provided in subsection (a) of this Code section shall receive monthly compensation from the commission in an amount equal to such person's regular compensation for the period of time that the law enforcement officer or firefighter is physically unable to perform the duties of his or her employment; provided, however, that such benefits provided pursuant to this Code section for injuries resulting from a single incident shall not be granted for more than a total of 12 months. A law enforcement officer or firefighter shall be required to submit to the commission satisfactory evidence of such disability.

(c) Benefits made available under this Code section shall be subordinate to any workers' compensation benefits, disability and other compensation benefits from the person's employer which the law enforcement officer or firefighter is awarded and shall be limited to the difference between the amount of workers' compensation benefits and other compensation benefits actually paid and the amount of the law enforcement officer's or firefighter's regular compensation.

(d) A law enforcement officer or firefighter who collects benefits pursuant to this Code section shall not be entitled to any benefits under Code Section 45-7-9.

(e) A law enforcement officer or firefighter who is disabled and who receives indemnification under Part 1 of this article as a result of an incident shall not be entitled to any compensation under this Code section for the disability resulting from the same incident. A law enforcement officer or firefighter who initially receives benefits under this Code section but who is determined subsequently to be entitled to benefits under Part 1 of this article with respect to the same incident or whose beneficiary is determined subsequently to be entitled to benefits under Part 1 of this article shall be entitled only to the amount equal to the benefits to which the person would be entitled under Part 1 reduced by the total amount of

benefits received under this Code section. (Code 1981, § 45-9-103, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 660, § 3; Ga. L. 2002, p. 1259, § 10.)

The 2002 amendments. — The first 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted “to” following “would be entitled” in the last sentence of subsection (e). The second 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” throughout this Code section, substituted “firefighter’s” for “fireman’s” at the end of subsection (c) and made identical

changes as the first 2002 amendment. The third 2002 amendment, effective July 1, 2002, made identical changes as the first and second 2002 amendments.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-103, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-73.

45-9-104. Submission of application; rules and regulations.

(a) An application for compensation with respect to a claim filed on or after July 1, 2001, for the disability of a law enforcement officer or firefighter shall be submitted by that person within 30 days from the date of the incident resulting in disability.

(b) The commission is authorized to promulgate rules and regulations relative to the program of compensation provided in this part. Such rules and regulations may provide for initial investigation of claims and the issuance of subpoenas to facilitate such investigation, special masters, hearings, procedures for applications for compensation, and all other matters so as to enable the commission to carry out its duties fairly, properly, and equitably. The chairperson of the commission shall be authorized to contact other state agencies for the purpose of using the personnel and resources of such agencies to assist the commission in carrying out its duties. (Code 1981, § 45-9-104, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(22); Ga. L. 2002, p. 1259, § 11(22).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” in subsection (a). The second 2002 amendment, effective July 1, 2002, made identical changes.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, Code Section 45-9-104, as enacted by Ga. L. 2000, p. 768, § 2, was redesignated as Code Section 45-9-74.

45-9-105. Effect of penal violations.

No compensation shall be awarded to any person otherwise entitled thereto who violates a penal law of this state which violation caused or contributed to the disability of the law enforcement officer or firefighter. (Code 1981, § 45-9-105, enacted by Ga. L. 2000, p. 283, § 2; Ga. L. 2002, p. 660, § 4(23); Ga. L. 2002, p. 1259, § 11(23).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted “firefighter” for “fireman” at the end.

The second 2002 amendment, effective July 1, 2002, made identical changes.

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2000, Code Section § 2, was redesignated as Code Section 45-9-105, as enacted by Ga. L. 2000, p. 768, 45-9-75.

45-9-106. Giving of false information; penalty.

(a) Any person who shall knowingly give false information or false testimony causing or intending to cause the payment of compensation which would not otherwise be justified under this part shall be guilty of a misdemeanor.

(b) Any such person convicted under subsection (a) of this Code section shall be liable to the state for any funds paid as a result of such false information or testimony. (Code 1981, § 45-9-106, enacted by Ga. L. 2000, p. 283, § 2.)

Code Commission notes. — Pursuant to § 2, was redesignated as Code Section 45-9-76.
Code Section 28-9-5, in 2000, Code Section 45-9-106, as enacted by Ga. L. 2000, p. 768,

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. requires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.
— A violation of O.C.G.A. § 45-9-106(a) is not an offense designated as one that re-

ARTICLE 5A

INDEMNIFICATION OF PUBLIC SCHOOL TEACHERS AND EMPLOYEES

Code Commission notes. — Pursuant to enacted by Ga. L. 2000, p. 768, § 3, was
Code Section 28-9-5, in 2000, Article 5A, as redesignated as Article 4A.

ARTICLE 6

CONSOLIDATION OF UNEMPLOYMENT COMPENSATION CLAIM MATTERS UNDER COMMISSIONER OF ADMINISTRATIVE SERVICES

45-9-110. Authorization for consolidation; billing procedure; reserve fund; investment of funds; contracting for services; provision of unemployment compensation benefits to certain county employees.

(a) The commissioner of administrative services shall have the authority to consolidate the processing of and response to unemployment compensation claims being performed on July 1, 1985, by each individual agency, department, board, bureau, commission, and authority of the state along with the payment to the Department of Labor of this state of all moneys due and owing as a result of paid unemployment compensation claims and shall

bill each department, agency, board, bureau, commission, or authority of the state for claims paid and for the reasonable cost of administering the program.

(b) The commissioner may retain all moneys paid to the Department of Administrative Services in response to such billings, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve fund for the purpose of making payments to the Department of Labor of this state and defraying the expenses necessary to administer the program. The commissioner shall invest any such moneys in the same manner as other moneys in his possession.

(c) The commissioner is authorized, in his discretion, to contract for any or all of the services necessary to carry out the functions enumerated in this article.

(d) The commissioner of administrative services shall have the authority to provide unemployment compensation benefits insurance to all of the county departments of health, county departments of family and children services, and community service boards. The commissioner of human resources shall establish a procedure to provide the Department of Administrative Services all of the underwriting information required, including but not limited to payroll data each quarter for the service centers, and shall collect the unemployment premium from such boards and departments and remit the premium to the Department of Administrative Services. All of the county departments of health, county departments of family and children services, and community service boards shall participate in such unemployment compensation benefit insurance program. (Code 1981, § 45-9-110, enacted by Ga. L. 1985, p. 973, § 1; Ga. L. 1994, p. 1717, § 6; Ga. L. 1999, p. 81, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Effect on administration of unemployment insurance program. — The obligation of the Georgia Department of Labor to administer the Unemployment Insurance Program in Georgia will not be impaired by virtue of O.C.G.A. § 45-9-110, because that

section merely creates a separate fund for use by the Department of Administrative Services in processing and responding to unemployment compensation claims on behalf of the state and its agencies. 1986 Op. Att’y Gen. No. U86-13.

CHAPTER 10

CODES OF ETHICS AND CONFLICTS OF INTEREST

Article 1

Codes of Ethics

- Sec.
45-10-1. Establishment and text of code of ethics for government service generally.
45-10-2. Secretary of State to print and distribute code of ethics.
45-10-3. Code of ethics for members of boards, commissions, and authorities — Establishment and text.
45-10-4. Code of ethics for members of boards, commissions, and authorities — Hearing on violation charge; notice of hearing; removal of member from office; filling vacancies; judicial review.
45-10-5. Authority to enact rules and regulations.

Article 2

Conflicts of Interest

PART 1

GENERAL PROVISIONS

- 45-10-20. Definitions.
45-10-21. Legislative declarations, purposes, and intent.
45-10-22. Full-time public officials with state-wide powers prohibited from transacting business with all state agencies; public officials or employees with limited powers prohibited from transacting business with own state agency.
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Sec.

- agency; exceptions to prohibitions.
45-10-25. Exceptions to prohibitions on transactions with state agencies.
45-10-26. Public officials and employees to file yearly disclosure statements concerning business transactions with state; statements to be public records.
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45-10-28. Penalties for violation of part; civil actions by Attorney General to collect penalties.

PART 2

CONTRACTS OF OFFICERS OF STATE INSTITUTIONS WITH STATE INSTITUTIONS

- 45-10-40. Contracting with state institutions not allowed; exceptions.
45-10-41. Penalty for profiting from contracts with state institutions generally; discharge from office.
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PART 3

CONTRACTS OF COUNTY COMMISSIONERS WITH COUNTY

- 45-10-60. Requirements for sales of real property by county commissioner to county.

PART 4

HOLDING OF ADDITIONAL OFFICES BY NONELECTIVE STATE OFFICERS OR EMPLOYEES

- 45-10-70. Holding office in political subdivision, political party, or political organization by nonelective state officers or employees.

Cross references. — Ethics in Government, Ch. 5, T. 21. Conflict of interest in zoning actions, Ch. 67A, T. 36.

OPINIONS OF THE ATTORNEY GENERAL

General Assembly member may work for city as attorney or on contract. — There is no per se conflict of interest if a member of the General Assembly also serves as either a city or county attorney, or performs contract work for a city or county within that legislator's district. 1984 Op. Att'y Gen. No. U84-34.

ARTICLE 1
CODES OF ETHICS

45-10-1. Establishment and text of code of ethics for government service generally.

There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust. (Ga. L. 1968, p. 1369.)

Law reviews. — For article "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Cited in *Pope v. Propst*, 179 Ga. App. 211, 345 S.E.2d 880 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Funeral service inspectors as trade association officers. — State Board of Funeral Service inspectors appointed pursuant to O.C.G.A. Title 43, Chapter 18 are not prohibited by state law from holding appointed or elected office in private associations of funeral service practitioners. However, serving as an officer in such private association

could create an appearance of impropriety by competing loyalties which may be owed to the association and to the board. 1990 Op. Att'y Gen. No. 90-25.

Dual employment. — A state employee may not contract with a county to perform services during the same 40-hour work week. 1998 Op. Att'y Gen. No. U98-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employeess, § 247 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 197.

ALR. — Refusal of public officer to answer frankly questions asked him during an investigation as ground for removal or discipline, 77 ALR 616.

Liability of public officer for interest or other earnings received on public money in his possession, 5 ALR2d 257.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 ALR4th 702.

45-10-2. Secretary of State to print and distribute code of ethics.

(a) The Secretary of State is authorized and directed to have the code of ethics for government service established in Code Section 45-10-1 printed upon an appropriately designed card which would be suitable for framing and exhibiting to the public and employees of the state and all governments therein.

(b) The Secretary of State is authorized and directed to have such number of said code of ethics for government service printed as, in his discretion, will be sufficient for distribution to the various departments,

boards, bureaus, and other agencies of the state and all governments therein.

(c) The Secretary of State is authorized and directed to furnish said printed code of ethics for government service to the various departments, boards, bureaus, and other agencies of the state and all governments therein without cost.

(d) The expenses incurred by the Secretary of State in carrying out this Code section shall be paid from the funds appropriated to or otherwise available to the legislative branch of government. (Ga. L. 1968, p. 1369.)

45-10-3. Code of ethics for members of boards, commissions, and authorities — Establishment and text.

Notwithstanding any provisions of law to the contrary, each member of all boards, commissions, and authorities created by general statute shall:

(1) Uphold the Constitution, laws, and regulations of the United States, the State of Georgia, and all governments therein and never be a party to their evasion;

(2) Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration;

(3) Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties;

(4) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit;

(5) Expose corruption wherever discovered;

(6) Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality, or services from any person, association, or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties;

(7) Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties;

(8) Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust; and

(9) Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or

indirect monetary interest in the subject matter of such matter or in the outcome of such official action. (Ga. L. 1976, p. 344, § 1.)

Law reviews. — For article "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Evidence is relevant regarding violation of ethical duties. — Testimony regarding the chief tax assessor's intoxication and conduct while attending certain county-financed activities, his conduct regarding certain female personnel who were employed in his office, and his attempted display of a jar of dog testicles to a female employee, was relevant at a hearing conducted by the board of county commissions to matters reasonably included within the scope of notice for his discharge hearing because the contested ev-

idence had some relevancy to establish whether defendant had violated a duty imposed on him by law, and whether he violated certain ethical duties prescribed by law. *Parsons v. Chatham County Bd. of Comm'rs*, 204 Ga. App. 130, 418 S.E.2d 459 (1992), overruled in part on other grounds, *Swafford v. Dade County Bd. of Comm'rs*, 266 Ga. 646, 469 S.E.2d 666 (1996).

Cited in *Morton v. Gardner*, 242 Ga. 852, 252 S.E.2d 413 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Act containing adverse matters constitutionally defective. — Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see Ga. Const. 1983, Art. III, Sec. V, Para. III), was designed for the prevention of surreptitious legislation, and the prevention of "omnibus" bills containing many adverse matters; although it is not required that the title of an act contain an exact synopsis of the law itself, it is required that the matter following the enacting clause be definitely related to what is expressed in the title, and have a natural connection to the main object of the legislation; therefore, the courts could rule the Act comprised of O.C.G.A. §§ 45-10-3 through 45-10-5, which Act imposes a general code of ethics on members of the Board of Human Resources and purports to take away the rule making authority of all boards, commissions, and authorities of state government, constitutionally defective (but other interpretations may militate against such construction). 1976 Op. Att'y Gen. No. 76-43.1.

Contracting with hospital authority. — A conflict of interest exists when any member of a hospital authority, whether the member be a physician, attorney, architect, or member of any other profession, contracts with the authority to render professional services to the authority for or on behalf of the

authority on a fee basis or for a stated stipend. 1983 Op. Att'y Gen. No. U83-5.

Contracts of members of Board of Offender Rehabilitation. — No conflict of interest would occur by brothers of a member of the Board of Offender Rehabilitation bidding upon and receiving contracts to sell meat to Central State Hospital or any other state agency where each brother's business is completely separate and distinct from the board member's, and that the board member holds no interest in the brothers' businesses. 1984 Op. Att'y Gen. No. 84-18.

A conflict of interest would arise if a member of the Board of Offender Rehabilitation sought to contract with the Department of Human Resources for the supply of meat where a portion of that meat would be used under the contract between the Department of Human Resources and the Department of Offender Rehabilitation for supplying meals to the Department of Offender Rehabilitation's staff and inmates. 1984 Op. Att'y Gen. No. 84-18.

State Transportation Board member. — No conflict of interest exists under current state law if the firm of a member of the State Transportation Board performs work for another governmental entity unless the work is directly or indirectly for the benefit of the

Georgia Department of Transportation. 1991 Op. Att'y Gen. No. U91-13.

Business acquiring property from state department. — There is no conflict of interest or violation of the applicable Code of Ethics for a member of the Board of Natural Resources to transact business with a corporation which has acquired from the state of Georgia real property previously within the custody and control of the Department of Natural Resources. 1988 Op. Att'y Gen. No. 88-4.

The State Ethics Commission acting as a body, or through an individual member of the commission, has no express or implied statutory authority to rule on a motion to recuse one of its members; rather, the member against whom the recusal motion is filed must determine, in light of O.C.G.A. § 45-10-3, whether he or she should voluntarily abstain. 1989 Op. Att'y Gen. 89-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 252 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 51.

ALR. — Refusal of public officer to answer frankly questions asked him during an investigation as ground for removal or discipline, 77 ALR 616.

Failure of public officer or employee to pay creditors on claims not related to his

office or position as ground or justification for his removal or suspension, 127 ALR 495.

What constitutes such discriminatory prosecution or enforcement of laws as to provide valid defense in state criminal proceedings, 95 ALR3d 280.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 ALR4th 702.

45-10-4. Code of ethics for members of boards, commissions, and authorities — Hearing on violation charge; notice of hearing; removal of member from office; filling vacancies; judicial review.

Upon formal charges being filed with the Governor relative to a violation of Code Section 45-10-3 on the part of a member of any such board, commission, or authority, the Governor or his designated agent shall conduct a hearing for the purpose of receiving evidence relative to the merits of such charges. The member so charged shall be given at least 30 days' notice prior to such hearing. If such charges are found to be true, the Governor shall forthwith remove such member from office and the vacancy shall be filled as provided by law. Such hearing shall be held in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and judicial review of any such decision shall be in accordance with such chapter. (Ga. L. 1976, p. 344, § 3.)

Law reviews. — For article, "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Act containing adverse matters constitutionally defective. — Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see Ga. Const. 1983,

Art. III, Sec. V, Para. III), was designed for the prevention of surreptitious legislation, and the prevention of "omnibus" bills con-

taining many adverse matters; although it is not required that the title of an act contain an exact synopsis of the law itself, it is required that the matter following the enacting clause be definitely related to what is expressed in the title, and have a natural connection to the main object of the legislation; therefore, the courts could rule the Act comprised of O.C.G.A. §§ 45-10-3 through 45-10-5, which Act imposes a general code of ethics on members of the Board of Human Resources and purports to take away the rule making authority of all boards, commissions,

and authorities of state government, constitutionally defective (but other interpretations may militate against such construction). 1976 Op. Att'y Gen. No. 76-43.1.

State Transportation Board member. — No conflict of interest exists under current state law if the firm of a member of the State Transportation Board performs work for another governmental entity unless the work is directly or indirectly for the benefit of the Georgia Department of Transportation. 1991 Op. Att'y Gen. No. U91-13.

RESEARCH REFERENCES

ALR. — Power to remove public officer without notice and hearing, 99 ALR 336.

Pardon as preventing disbarment of attorney or removal of officer or as nullifying disbarment or removal, 143 ALR 172; 70 ALR2d 268.

Inefficiency or misconduct of deputy or subordinate as ground for removal of public officer, 143 ALR 517.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-10-5. Authority to enact rules and regulations.

No member of any board, commission, or authority created by general statute shall enact any rules or regulations or publicize such as being general laws and such rules and regulations shall in no way have the effect of law. (Ga. L. 1976, p. 344, § 2.)

Law reviews. — For article, "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Act containing adverse matters constitutionally defective. — Ga. Const. 1976, Art. III, Sec. VII, Para. IV (see Ga. Const. 1983, Art. III, Sec. V, Para. III), was designed for the prevention of surreptitious legislation, and the prevention of "omnibus" bills containing many adverse matters; although it is not required that the title of an act contain an exact synopsis of the law itself, it is required that the matter following the enacting clause be definitely related to what is expressed in the title, and have a natural connection to the main object of the legislation; therefore, the courts could rule the Act comprised of O.C.G.A. §§ 45-10-3 through 45-10-5, which Act imposes a general code of ethics on members of the Board of Human Resources and purports to take away the rule making authority of all boards, commissions,

and authorities of state government, constitutionally defective (but other interpretations may militate against such construction). 1976 Op. Att'y Gen. No. 76-43.1.

Construction of statute susceptible of more than one meaning. — O.C.G.A. § 45-10-5 may be viewed as merely stating that no single member of a board may attempt to usurp the power of the board as a whole to establish policy matters; this construction comports with the rule that where a statute is susceptible of more than one meaning, it should be interpreted consistently with the state Constitution. 1976 Op. Att'y Gen. No. 76-43.1.

O.C.G.A. § 45-10-5 does not negate the rule making powers of the Board of Human Resources. 1976 Op. Att'y Gen. No. 76-43.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 252 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 51, 89.

ARTICLE 2

CONFLICTS OF INTEREST

Cross references. — Financial interests of commissioner of administrative services or employees of Department of Administrative

Services in state contracts and purchases, § 50-5-78.

PART 1

GENERAL PROVISIONS

Editor's notes. — The former part consisted of Code Sections 45-10-20 through 45-10-26, relating to conflits of interest gen-

erally, and was based on Ga. L. 1981, Ex. Sess., p. 8.

45-10-20. Definitions.

As used in this part, the term:

(1) "Agency" means any agency, authority, department, board, bureau, commission, committee, office, or instrumentality of the State of Georgia but shall not mean a political subdivision of the State of Georgia.

(2) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.

(3) "Employee" means any person who, pursuant to a written or oral contract, is employed by an agency.

(4) "Family" means spouse and dependents.

(5) "Full-time" means 30 hours of work for the state per week for more than 26 weeks per calendar year.

(6) "Limited powers" means those powers other than state-wide powers.

(7) "Part-time" means any amount of work other than full-time work.

(8) "Person" means any person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity.

(9) "Public official" means any person elected to a state office and means any person appointed to a state office where in the conduct of such office the person so appointed has administrative and discretionary authority to receive and expend public funds and to perform certain functions concerning the public which are assigned to him by law.

(10) "State-wide powers" means those powers exercised by public officials which affect and influence all of state government. Public officials who exercise such powers include but are not limited to the Governor, the Lieutenant Governor, members of the General Assembly, Justices of the Supreme Court, Judges of the Court of Appeals, the Secretary of State, the Attorney General, the state auditor, the commissioner of administrative services, the commissioner of the State Merit System of Personnel Administration and members of the State Personnel Board, the director of the Office of Planning and Budget, judges of the superior courts, and district attorneys.

(11) "Substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(12) "Transact business" or "transact any business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative and means to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative. (Code 1981, § 45-10-20, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 1337, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "administrative services" was substituted for "the Department of Administrative Services" in paragraph (10).

Law reviews. — For article, "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Pharmacy selling medicine to a Medicaid recipient is not selling personal property to Department of Medical Assistance (now Department of Community Health) and hence

is not "transacting any business" with the department. *Georgia Dep't of Medical Assistance v. Allgood*, 253 Ga. 370, 320 S.E.2d 155 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Transactions by brothers of officials. — Transactions with state agencies by family members of public officials which are statutorily prohibited are limited to transactions by the official's spouse or dependents, not the official's brothers. 1984 Op. Att'y Gen. No. 84-18.

Member of Board of Offender Rehabilita-

tion is public official. — Since members of the Board of Offender Rehabilitation have a scope of influence which is more or less limited to the Department of Offender Rehabilitation, and in view of the statutory definition of "state-wide powers," a board member is a public official with limited powers. 1984 Op. Att'y Gen. No. 84-18.

State Personnel Board member. — A member of the State Personnel Board is prohibited from representing a private client, for a fee, in a court of law or in any other adversarial proceeding where such representation might defeat the official public actions of another public officer. 1991 Op. Att'y Gen. 91-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 247 et seq. **C.J.S.** — 67 C.J.S., Officers and Public Employees, §§ 204, 257.

45-10-21. Legislative declarations, purposes, and intent.

(a) It is essential to the proper operation of democratic government that public officials be independent and impartial, that governmental decisions and policy be made in the proper channels of the governmental structure, that public office not be used for private gain other than the remuneration provided by law, and that there be public confidence in the integrity of government. The attainment of one or more of these ends is impaired whenever there exists a conflict between the private interests of an elected official or a government employee and his duties as such. The public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of elected officials and government employees in situations where conflicts exist.

(b) It is also essential to the proper operation of government that those best qualified be encouraged to serve the government. Accordingly, legal safeguards against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are best qualified to serve it. An essential principle underlying the staffing of our government structure is that its elected officials and employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of such elected officials and employees to the public cannot be avoided.

(c) The General Assembly declares that the operation of responsible democratic government requires that the fullest opportunity be afforded to the people to petition their government for the redress of grievances and to express freely to individual members of the General Assembly, to committees of the General Assembly, and to officials of the executive branch their opinions on legislation, on pending executive actions, and on current issues and that, to preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the General Assembly or the executive branch to take specific actions, either by direct communication to such officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed. The provi-

sions of this article shall be liberally construed to promote complete disclosure of such information so as to assure that the public interest will be fully protected.

(d) It is the policy and purpose of this article to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the recruitment and retention of qualified personnel by prescribing essential restrictions against conflicts of interest in state government without creating unnecessary barriers to the public service. (Code 1981, § 45-10-21, enacted by Ga. L. 1983, p. 1326, § 1.)

Law reviews. — For article “Conflicts of Interests of Public Officers and Employees,” see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Ad hoc analysis rather than a per se rule of disqualification applies pursuant to O.C.G.A. § 45-10-21(b) to determine whether an impermissible conflict exists where a lawyer-legislator represents a client with a claim against the state, and courts should review the facts of a case to deter-

mine whether the lawyer-legislator has committed any improper conduct or professional wrongdoing in order to decide whether the lawyer-legislator should be disqualified. *Georgia Ports Auth. v. Harris*, 274 Ga. 146, 549 S.E.2d 95 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 252, 255.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 204, 257.

45-10-22. Full-time public officials with state-wide powers prohibited from transacting business with all state agencies; public officials or employees with limited powers prohibited from transacting business with own state agency.

(a)(1) It shall be unlawful for any full-time public official who has state-wide powers, for himself or on behalf of any business, or for any business in which such public official or member of his family has a substantial interest to transact any business with any agency.

(2) It shall be unlawful for any public official who has limited powers, for himself or on behalf of any business, or for any business in which such public official or member of his family has a substantial interest to transact any business with the agency for which such public official serves.

(b) The provisions of paragraph (1) of subsection (a) of this Code section shall not apply to:

(1) Any transaction made pursuant to sealed competitive bids;

(2) Any transaction when the amount of a single transaction does not exceed \$250.00 and when the aggregate of all such transactions does not exceed \$9,000.00 per calendar year; and

(3) Any transaction involving the lease of real property to or from any agency if such transaction has been approved by the State Properties Commission or the Space Management Division of the Department of Administrative Services.

(c) Any person who knowingly violates subsection (a) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-22, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 1337, § 2.)

Law reviews. — For article, “Conflicts of Interests of Public Officers and Employees,” see 13 Ga. St. B.J. 64 (1976).

OPINIONS OF THE ATTORNEY GENERAL

State board member who is Medicaid provider. — The only time a conflict of interest would occur for a state board member who is a Medicaid provider but who does not have “state-wide powers” would be if such individual was a member of the Board of Medical Assistance (now Board of Community Health), which is authorized to establish the policy for the Department of Medical Assistance (now Department of Community Health). 1983 Op. Att’y Gen. No. U83-48.

Authority member’s company contracting with another state agency. — A transaction between the Department of Transportation and a construction business whose president/owner is also a member of the Georgia Ports Authority would not constitute a conflict of interest under state law unless the transaction is for the benefit of the Georgia Ports Authority in which case a conflict of interest would exist. 1983 Op. Att’y Gen. No. U83-56.

State Transportation Board member. — No conflict of interest exists under current state law if the firm of a member of the State Transportation Board performs work for another governmental entity unless the work is directly or indirectly for the benefit of the Georgia Department of Transportation. 1991 Op. Att’y Gen. No. U91-13.

Contract by state with board member’s brothers not conflict. — No conflict of inter-

est would occur by brothers of a member of the Board of Offender Rehabilitation bidding upon and receiving contracts to sell meat to Central State Hospital or any other state agency where each brother’s business is completely separate and distinct from the board member’s, and that the board member holds no interest in the brothers’ businesses. 1984 Op. Att’y Gen. No. 84-18.

Business acquiring property from state department. — There is no conflict of interest or violation of the applicable Code of Ethics for a member of the Board of Natural Resources to transact business with a corporation which has acquired from the state of Georgia real property previously within the custody and control of the Department of Natural Resources. 1988 Op. Att’y Gen. No. 88-4.

Board member’s contract with another department to supply board’s department is conflict. — A conflict of interest would arise if a member of the Board of Offender Rehabilitation sought to contract with the Department of Human Resources for the supply of meat where a portion of that meat would be used under the contract between the Department of Human Resources and the Department of Offender Rehabilitation for supplying meals to the Department of Offender Rehabilitation’s staff and inmates. 1984 Op. Att’y Gen. No. 84-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 252 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 204, 257.

ALR. — Liability of public officer or his bond for the defaults and misfeasances of his clerks, assistants, or deputies, 1 ALR 222; 102 ALR 174; 116 ALR 1064; 71 ALR2d 1140.

45-10-23. Full-time employees prohibited from transacting business with own state agency; exception to prohibition for Board of Regents employees.

(a) It shall be unlawful for any full-time employee, for himself or on behalf of any business, or for any business in which such employee or member of his family has a substantial interest to transact any business with the agency by which such employee is employed; provided, however, that neither this Code section nor any other provision of law shall prevent full-time employees of the Board of Regents of the University System of Georgia from serving as members of the governing boards of private, nonprofit, educational, athletic, or research related foundations and associations which are organized for the purpose of supporting institutions of higher education in this state and which in furtherance of this purpose may transact business with such institutions or with the Board of Regents of the University System of Georgia.

(b) Any person who knowingly violates subsection (a) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-23, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1985, p. 882, § 1.)

Law reviews. — For article, "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-10-23 is not applicable to a member of the General Assembly since such is not a member of any board, bureau, commission, or state agency. 1963-65 Op. Att'y Gen. p. 501.

Members of state boards are prohibited from doing any business with the boards on which they serve and may otherwise do business with the state only on a competitive bid basis. 1965-66 Op. Att'y Gen. No. 66-233.

Official not prohibited from holding banking position. — O.C.G.A. § 45-10-23 was designed to prevent a member of a state board from using that member's official influence to secure a personal profit and O.C.G.A. § 45-10-23 would not render irreg-

ular in any way the deposit of funds of the Board of Regents in an incorporated bank of which a member of the board is an officer. 1960-61 Op. Att'y Gen. p. 466.

The prohibition set out in O.C.G.A. § 45-10-23 does not prohibit an officer, director, and stockholder of a bank engaged in ordinary banking transactions with the Stone Mountain Memorial Association from being a member of the association. 1963-65 Op. Att'y Gen. p. 169.

Membership on the Veterans Service Board of an officer, director or stockholder of a bank engaged in ordinary banking transactions with the Veterans Service Board and which did not sell goods, wares or

merchandise, or other chattels or services to the Department of Veterans Service would not be in violation of O.C.G.A. §§ 45-10-20 through 45-10-26. 1965-66 Op. Att'y Gen. No. 66-41.

Assuming that the depository for all county school funds is chosen by the governing authorities of the county, the fact that a member of the county board of education is a stockholder of such bank would pose no problem under the state's conflict of interest laws; while the situation would be less clear if the depository were selected by the school board, even here the fact that a board member was a stockholder in the bank would not

result in a conflict of interest violation. 1967 Op. Att'y Gen. No. 67-103.

Conflict of interest proviso not affected by nonprofit corporation code. — The proviso in O.C.G.A. § 45-10-23(a), negating a "conflict of interest" situation for board employees who serve on the governing boards of foundations and associations supporting higher education institutions, is not affected, limited or modified by provisions of the Nonprofit Corporation Code, O.C.G.A. Ch. 3, T. 14, placing certain disclosure requirements upon directors and officers of nonprofit corporations. 1995 Op. Att'y Gen. No. 95-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 252 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 204, 257.

ALR. — Public officer's relation to corpo-

ration as officer or stockholder as constituting interest within statute or rule of common law against public officer being interested in contract public, 140 ALR 344.

45-10-24. Part-time public officials with state-wide powers prohibited from transacting business with any state agency; part-time employees prohibited from transacting business with own state agency; exceptions to prohibitions.

(a)(1) Except as provided in subsection (b) of this Code section, it shall be unlawful for any part-time public official who has state-wide powers, for himself or on behalf of any business, or for any business in which such public official or member of his family has a substantial interest to transact any business with any agency.

(2) Except as provided in subsection (b) of this Code section, it shall be unlawful for any part-time employee, for himself or on behalf of any business, or for any business in which such employee or member of his family has a substantial interest to transact any business with the agency by which such employee is employed.

(b) The provisions of subsection (a) of this Code section shall not apply to:

(1) Any transaction made pursuant to sealed competitive bids;

(2) Any transaction when the amount of a single transaction does not exceed \$250.00 and when the aggregate of all such transactions does not exceed \$9,000.00 per calendar year;

(3) Any transaction involving the lease of real property to or from any agency if such transaction has been approved by the State Properties

Commission or the Space Management Division of the Department of Administrative Services; and

(4) Any transaction involving the purchase of surplus state property at a public auction.

(c) Any person who knowingly violates subsection (a) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-24, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 452, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, “of this Code section” was inserted in the introductory language of subsection (b).

Law reviews. — For article, “Conflicts of Interests of Public Officers and Employees,” see 13 Ga. St. B.J. 64 (1976).

OPINIONS OF THE ATTORNEY GENERAL

State board member owning interest in nursing home or pharmacy receiving Medicaid payments. — A conflict of interest would occur if a member of a state board owns a substantial interest in a nursing home or pharmacy that receives Medicaid payments and such individual is a member of the Board of Medical Assistance (now Board of Community Health) or of a board which has state-wide powers. 1983 Op. Att’y Gen. No. U83-48.

Legislator or family member who owns assets in business receiving Medicaid reimbursement. — It would be a violation of O.C.G.A. § 45-10-24(a)(1) for a member of the General Assembly, or a family member of a legislator, to own more than 25 percent of the assets or stock of any business which receives Medicaid reimbursement from the Department of Medical Assistance (now Department of Community Health). 1983 Op. Att’y Gen. No. U83-48.

Legislator or family member who owns assets in company leasing equipment to Medicaid provider. — A violation of O.C.G.A. § 45-10-24(a)(1) would not occur if a legislator owned an interest in a corporation which receives income from renting medical equipment to a Medicaid provider, since in such instance it is the provider, not the legislator, who is transacting business with the Department of Medical Assistance (now Department of Community Health). 1983 Op. Att’y Gen. No. U83-48.

Legislator owning pharmacy receiving Medicaid payments under limit. — A conflict of interest would not occur if a member of the General Assembly owns a pharmacy that receives Medicaid payments if the amount of a single Medicaid transaction does not exceed \$250.00 and the aggregate of all transactions does not exceed \$9,000 per calendar year. 1983 Op. Att’y Gen. No. U83-63.

45-10-25. Exceptions to prohibitions on transactions with state agencies.

(a) The provisions of Code Sections 45-10-22, 45-10-23, and 45-10-24 shall not apply to:

(1) Any transaction involving the sale of real property to the state or any agency through eminent domain;

(2) Any transaction involving the purchase by the public official or employee of any health or life insurance, disability benefits, or retirement or pension benefits offered as a part of a public official’s or employee’s service or employment;

(3) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and any person, the cost of which transaction is paid directly or indirectly by state funds, if the property or services involved in the transaction are for the private use and benefit of the person to whom such property or services are sold or rendered and such person does not subsequently sell or lease such property or services to an agency;

(4) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof under which it is agreed that the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest is to provide Medicaid and related services and benefits or medicare and related services and benefits, or both, and under which it is agreed that the state or any agency thereof is to reimburse or pay for the services and benefits so provided;

(5) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof under which the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest directly or indirectly receives reimbursement or payment from the state or any agency thereof for providing Medicaid and related services and benefits or medicare and related services and benefits, or both, and under which the state or any agency thereof reimburses or pays the public official or employee or any business in which such public official or employee or any member of his family has a substantial interest for providing Medicaid and related services and benefits or medicare and related services and benefits, or both;

(6) Any transaction between a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and any state contractor if there was no agreement prior to the transaction that the public official or employee would assist, other than by providing goods or services as required under the terms of the agreement underlying the transaction, the contractor in obtaining, retaining, or fulfilling the state contract and if the public official or employee does not assist, other than by providing goods or services as required under the terms of the agreement underlying the transaction, the contractor in obtaining, retaining, or fulfilling the state contract;

(7) Any transaction involving part-time employment by the Georgia Building Authority or the Department of Natural Resources of custodial and cleaning workers or cooks who work for other agencies;

(8) Any transaction involving part-time employment by any agency of a chaplain; firefighter; any person holding a doctoral or master's degree from an accredited college or university; a licensed physician, dentist, or psychologist; a registered nurse or licensed practical nurse; or a certified oral or manual interpreter for deaf persons, if employed by the state, if:

(A) The chief executive officer of the department, agency, commission, or authority which desires to obtain the services of a chaplain, firefighter, any person holding a doctoral or master's degree from an accredited college or university, a licensed physician, dentist, or psychologist, a registered nurse or licensed practical nurse, or a certified oral or manual interpreter for deaf persons presently employed by another department, agency, commission, or authority of the state shall certify in writing the need for the services and set forth why the best interest of the state will be served by obtaining the part-time services of such a person in lieu of obtaining such services from a person not presently employed by the state;

(B) The chief executive officer of the department, agency, commission, or authority presently employing the chaplain; firefighter; any person holding a doctoral or master's degree from an accredited college or university; the licensed physician, dentist, or psychologist; the registered nurse or licensed practical nurse; or the certified oral or manual interpreter for deaf persons shall certify in writing that the person whose services are desired is available to perform such services, that the performance of such services will not detract or have a detrimental effect on the performance of said person's employment and, where appropriate, that the part-time employment of such person by the department, agency, commission, or authority desirous of obtaining the services will be in the best interest of the state; and

(C) The departments, agencies, commissions, or authorities, after having complied with subparagraphs (A) and (B) of this paragraph shall, by agreement, establish the procedures under which the employee shall perform the additional services. The agreement shall specify the means of employment either as a part-time employee or as a consultant, the compensation, and other pertinent details and conditions of the employment relationship. The agreement shall be terminable at any time by either of the departments, agencies, commissions, or authorities;

(9) Any transaction involving the Public Service Commission's employment of any state employee who has any particular expertise or knowledge which may be of assistance to the Georgia Public Service Commission or the consumers' utility counsel division of the office of the administrator created in Code Section 10-1-395 in fulfilling its duties and responsibilities under Title 46. The terms and conditions of such employment shall be solely determined by the Georgia Public Service

Commission; but, in any event, the employee may not provide services to the Georgia Public Service Commission during such times as he or she is regularly scheduled to be at his or her primary place of employment unless the employee has received permission to do so from his or her regular employer or unless the employee is on annual leave or leave without pay;

(10) Any transaction involving an emergency purchase by any agency which must be made to protect the health, safety, or welfare of the citizens or property of Georgia;

(11) Any transaction involving property or a service for which the only source of supply in the State of Georgia is from the public official or employee or a business in which such public official or employee or member of his family has a substantial interest;

(12) Any transaction occurring prior to March 1, 1983;

(13) Any transaction occurring prior to qualifying to run for elective office, accepting appointment to public office, or accepting public employment and any transaction occurring after qualifying to run for elective office, accepting appointment to public office, or accepting public employment if the legal obligation and duty to undertake such transaction arose prior to qualifying to run for elective office, accepting appointment to public office, or accepting public employment;

(14) Any transaction whereby a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest collects a fee or commission as compensation for performing a service for the state when such performance is required or authorized by law, including but not limited to the collection of state sales tax, the collection of license fees, and the collection of excise taxes;

(15) Any transaction whereby an appointed public official or employee, under the procedures specified in this paragraph, sells to a unit of the University System of Georgia services as a teacher or instructor of an evening or night course or program, if:

(A) The chief executive officer of the unit of the University System of Georgia shall certify in writing the need for the services and set forth why the best interest of the state will be served by obtaining the services of such state official or employee in lieu of obtaining such services from a person not presently employed by the state;

(B) The chief executive officer of the department, agency, commission, or authority presently employing the state official or employee shall certify in writing that the person whose services are desired is available to perform such services, that the performance of such services will not detract or have a detrimental effect on the perfor-

mance of said person's full-time employment, and, where appropriate, that the employment of such person by the unit of the University System of Georgia will be in the best interest of the state; and

(C) The departments, agencies, commissions, authorities, and units, after having complied with subparagraphs (A) and (B) of this paragraph, shall, by agreement, establish the procedures under which the official or employee shall perform the additional services. The agreement shall specify the means of employment, the compensation, and other pertinent details and conditions of the employment relationship. The agreement shall be terminable at any time by any of the departments, agencies, commissions, authorities, or units; or

(16) Any transaction involving the lease for the purpose of small business and economic development of laboratory and research facilities owned by the Board of Regents of the University System of Georgia during times when the laboratory and research facilities are not in use.

(b) Authority is given for a public official or employee or any business in which such public official or employee or any member of his family has a substantial interest and the state or any agency thereof to engage in any transaction exempted from the coverage of this part by subsection (a) of this Code section and subsection (b) of Code Section 45-10-24 and any transaction necessary and proper to such transaction. (Code 1981, § 45-10-25, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 1204, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 1985, p. 1034, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1987, p. 848, § 1; Ga. L. 1994, p. 308, § 1; Ga. L. 1995, p. 167, § 2; Ga. L. 2002, p. 660, § 4(24); Ga. L. 2002, p. 1259, § 11(24).)

The 2002 amendments. — The first 2002 amendment, effective July 1, 2002, substituted "firefighter" for "fireman" throughout paragraph (a)(8). The second 2002 amendment, effective July 1, 2002, made identical changes.

Cross references. — Creation of authorities for financing residential care facilities for the elderly, § 31-7-110 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, semicolons

were substituted for commas in five places in the introductory language of paragraph (a)(8) and in five places in subparagraph (a)(8)(B) and "consumers' utility counsel" was substituted for "Consumers' Utility Counsel" in the first sentence of paragraph (a)(9).

Law reviews. — For article, "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Medicaid reimbursement. — Nursing homes or pharmacies owned by members of the General Assembly or their spouses may, consistent with the Code of Ethics for Government Service and the State Constitution, receive Medicaid reimbursements from the state. *Georgia Dep't of Medical Assistance v.*

Allgood, 253 Ga. 370, 320 S.E.2d 155 (1984) (decided prior to 1984 amendment).

A pharmacy selling medicine to a Medicaid recipient is not selling personal property to Department of Medical Assistance (now Department of Community Health) and hence is not "transacting any business" with

the department. Georgia Dep't of Medical Assistance v. Allgood, 253 Ga. 370, 320 S.E.2d 155 (1984) (decided prior to 1984 amendment).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-10-25 must be construed in tandem with O.C.G.A. § 21-5-50(b)(5), and because salary, expense reimbursements, and per diem payments are not payments which are authorized and exempted from disclosure under O.C.G.A. § 45-10-25, O.C.G.A. § 21-5-50(b)(5) does not require that these payments be included on the financial disclosure statement filed pursuant

to O.C.G.A. § 21-5-50(a). 1989 Op. Att'y Gen. No. 89-23.

University institution cannot contract for another agency's employed. — A member institution of the University System of Georgia may not contract for the services of an employee of an agency in another branch of state government. 1993 Op. Att'y Gen. No. 93-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 252 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 120-122, 257, 258.

ALR. — Right to jury trial in proceeding

for removal of public officer, 3 ALR 232; 8 ALR 1476.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-10-26. Public officials and employees to file yearly disclosure statements concerning business transactions with state; statements to be public records.

(a) Except as provided in subsection (b) of this Code section, any public official or employee, whether for himself or on behalf of any business, or any business in which such public official or employee or any member of his family has a substantial interest who transacts business with the state or any agency thereof shall disclose such transactions. Such disclosure shall be submitted prior to January 31 each year to the Secretary of State on such forms as he shall prescribe and shall include an itemized list of the previous year's transactions with the dollar amount of each transaction reported and totaled. Such disclosure statements shall be public records.

(b) The requirement to disclose certain transactions as provided in subsection (a) of this Code section shall not apply to any transaction when the amount of a single transaction does not exceed \$250.00 and when the aggregate of all transactions does not exceed \$9,000.00 per calendar year.

(c) Any person who fails to file a disclosure statement as required in subsection (a) of this Code section shall be subject to the penalties provided for in Code Section 45-10-28. (Code 1981, § 45-10-26, enacted by Ga. L. 1983, p. 1326, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 1196, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 257.

45-10-27. Construction of part with rules and regulations of the State Merit System of Personnel Administration.

This part shall in no way amend or repeal any statute or regulation promulgated pursuant thereto pertaining to the State Merit System of Personnel Administration. (Code 1981, § 45-10-27, enacted by Ga. L. 1983, p. 1326, § 1.)

45-10-28. Penalties for violation of part; civil actions by Attorney General to collect penalties.

(a) (1) Any appointed public official or employee who violates Code Section 45-10-22, 45-10-23, 45-10-24, or 45-10-26 shall be subject to:

(A) Removal from office or employment;

(B) A civil fine not to exceed \$10,000.00; and

(C) Restitution to the state of any pecuniary benefit received as a result of such violation.

(2) Any elected public official who violates Code Section 45-10-22, 45-10-23, 45-10-24, or 45-10-26 shall be subject to:

(A) A civil fine not to exceed \$10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(3) Any business which violates Code Section 45-10-22, 45-10-23, 45-10-24, or 45-10-26 shall be subject to:

(A) A civil fine not to exceed \$10,000.00; and

(B) Restitution to the state of any pecuniary benefit received as a result of such violation.

(b) The penalties provided for in subsection (a) of this Code section may be imposed in any civil action brought for that purpose, and such actions shall be brought by the Attorney General. (Code 1981, § 45-10-28, enacted by Ga. L. 1983, p. 1326, § 1.)

PART 2**CONTRACTS OF OFFICERS OF STATE INSTITUTIONS WITH STATE INSTITUTIONS****45-10-40. Contracting with state institutions not allowed; exceptions.**

No member of the Board of Regents of the University System of Georgia or of the Board of Human Resources, no trustee or other officer of any

institution which is wholly or in part supported by state funds, and no partnership of which such person is a member shall make any contract with the governing board or trustees of such institution or any officer of such institution for the sale and purchase of merchandise or supplies for such institution whereby profit shall accrue to such board member or trustee or such partnership of which such person is a member. Such trustee or officer of such institution shall not make any profit or receive any money for the sale, handling, or disposal of any crop or crops or property of such institution. Such member, trustee, or other officer of such institution shall not make or be interested in any contract for supplies or merchandise for such institution when such contract or the making of the same is wholly or in part made or influenced by the action of the board governing such institution or the trustees thereof or is controlled by any officer of such institution; and any and all such contracts are declared to be illegal and void, provided that any such contracts as are described in this Code section may be made with a corporation of which any such board member or trustee is a stockholder if such member or trustee does not vote on or participate in the making of such contract. No board member or trustee of such institution shall be prohibited from making contracts for furnishing supplies to the students or faculty of such institution for their individual use. (Ga. L. 1918, p. 265, § 1; Code 1933, § 89-904; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, §§ 253, 262, 378, 383, 414.

ALR. — Relation as creditor of contracting party as constituting interest within statute or rule of common law against public officer being interested in contract with the public, 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an

officer to be interested in a public contract, 74 ALR 792.

Member of governmental board voting on measure involving his personal interest, 133 ALR 1257.

Public officer's relation to corporation as officer or stockholder as constituting interest within statute or rule of common law against public officer being interested in contract public, 140 ALR 344.

45-10-41. Penalty for profiting from contracts with state institutions generally; discharge from office.

Any member of the Board of Regents of the University System of Georgia or of the Board of Human Resources or any trustee or other officer of any institution supported wholly or in part by state funds who violates Code Section 45-10-40 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as prescribed in Code Section 17-10-3. If any member of the Board of Regents of the University System of Georgia or of the Board of Human Resources is found guilty of violating Code Section 45-10-40, his office shall become vacant; and it is the duty of the Governor, where the power to fill the vacancy is lodged in the Governor, to appoint some other person to fill the vacancy. If any trustee or other officer of such

institution is found guilty of violating Code Section 45-10-40, he shall be discharged from his office in such institution and shall not be eligible to be reelected or reappointed to such office; and the vacancy shall be filled by the board or the authority which, under the law, has the right to fill such vacancy. (Ga. L. 1918, p. 266, § 2; Code 1933, § 89-9915; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 375.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 256.

ALR. — Relation as creditor of contracting party as constituting interest within statute or rule of common law against public officer being interested in contract with the public, 73 ALR 1352.

Public officer's relation to corporation as officer or stockholder as constituting interest within statute or rule of common law against public officer being interested in contract public, 140 ALR 344.

Removal of public officers for misconduct during previous term, 42 ALR3d 691.

45-10-42. Reporters for State Board of Workers' Compensation may sell transcripts to state agencies.

Notwithstanding any other provision of Part 1 of this article or any other provision of this Code, public officers and employees who are reporters for the State Board of Workers' Compensation may, for themselves or on behalf of any business entity, when providing transcripts of records to parties under subsection (g) of Code Section 34-9-102, sell such transcripts to any agency of the state and receive compensation therefor. (Code 1981, § 45-10-42, enacted by Ga. L. 1983, p. 719, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Transcripts as state property. — Inasmuch as the court reporters are full-time employees of the State Board of Workers' Compensation, the transcripts which are produced by those court reporters are property of the State Board of Workers' Compensation. 1986 Op. Att'y Gen. No. 86-47.

Sale of transcripts. — Court reporters for the State Board of Workers' Compensation

may sell workers' compensation transcripts to state agencies at any time when providing such transcripts to a party to the case, but they may not sell transcripts of workers' compensation hearings to third parties which are not state agencies. 1986 Op. Att'y Gen. No. 86-47.

PART 3

CONTRACTS OF COUNTY COMMISSIONERS WITH COUNTY

45-10-60. Requirements for sales of real property by county commissioner to county.

Notwithstanding any other provision of general or local law, a county commissioner or member of a board of county commissioners may sell real property to the county if all of the following conditions are met:

- (1) The real property which is the subject of the sale is adjacent to a landfill owned and operated by the county;
- (2) The real property which is the subject of the sale is to be used by the county in connection with the operation of the landfill;
- (3) The sale price of the real property does not exceed the lowest of three appraisals of the fair market value of the property made by three appraisers appointed by the probate judge of the county; and
- (4) Disclosure of the sale is made as required by Code Section 16-10-6. (Code 1981, § 45-10-60, enacted by Ga. L. 1984, p. 792, § 1.)

PART 4

HOLDING OF ADDITIONAL OFFICES BY NONELECTIVE STATE OFFICERS OR EMPLOYEES

45-10-70. Holding office in political subdivision, political party, or political organization by nonelective state officers or employees.

No rules or regulations of any state agency, department, or authority shall prohibit nonelective officers or employees of this state from offering for or holding any elective or appointive office of a political subdivision of this state or any elective or appointive office of a political party or political organization of this state, provided that the office is not full time and does not conflict with the performance of the official duties of the person as a state employee. (Code 1981, § 45-10-70, enacted by Ga. L. 1985, p. 427, § 1.)

JUDICIAL DECISIONS

No effect on O.C.G.A. § 42-9-15. — O.C.G.A. § 45-10-70 does not expressly or impliedly repeal O.C.G.A. § 42-9-15. It is reasonable for the General Assembly to loosen its limitations on political activity for state employees generally in the first provision, while continuing to prohibit pardon

and parole board members and employees from engaging in political activity in the second provision. *MacKenzie v. Snow*, 675 F. Supp. 1333 (N.D. Ga. 1987).

Termination not constitutional violation. — Termination of plaintiff's position as a parole review officer of the board of pardons

and paroles after his election to county and state political party committees, does not violate his constitutional rights of due process and equal protection or his constitution-

ally protected rights of political speech and association. *MacKenzie v. Snow*, 675 F. Supp. 1333 (N.D. Ga. 1987).

OPINIONS OF THE ATTORNEY GENERAL

No effect on O.C.G.A. § 42-9-15. — O.C.G.A. § 45-10-70 does not repeal, supersede, or otherwise modify O.C.G.A. § 42-9-15 as it applies to the political activities of a full-time employee of the State Board of Pardons and Paroles since O.C.G.A. § 45-10-70 only prohibits the promulgation of rules and regulations affecting an employee's ability to engage in certain political activity. 1987 Op. Att'y Gen. No. 87-16.

Rule consistent with section. — The State Personnel Board Rules and Regulations, Sec-

tion 3.500, Political Activity, as amended, are consistent with O.C.G.A. § 45-10-70. 1987 Op. Att'y Gen. No. 87-16.

Prohibited employment. — An individual may not be employed by the Georgia Bureau of Investigation Division of Forensic Sciences at the same time that the individual is a county deputy coroner. 1997 Op. Att'y Gen. No. 97-21.

Board of Regents may prohibit employees from seeking or holding state or elective office while actively employed by the University System. 1998 Op. Att'y Gen. No. 98-5.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of state statutes restricting political activities

of public officers or employees, 51 ALR4th 702.

CHAPTER 11

MISCELLANEOUS OFFENSES CONCERNING PUBLIC OFFICERS AND EMPLOYEES

Sec.		Sec.	
45-11-1.	Offenses involving public records, documents, and other items.	45-11-7.	Retaining compensation for legal advertisements.
45-11-2.	Selling office or dividing fees.	45-11-8.	Engaging in bail bond business.
45-11-3.	Assault under color of office.	45-11-9.	Discrimination against optometrists or physicians in suggestions for visual care.
45-11-4.	Unprofessional conduct; misdemeanor; applicability; indictment.	45-11-10.	Coercion of other officer or employee to give anything of value for political purposes.
45-11-5.	Extortion generally.		
45-11-6.	Demanding more than legal fees for advertising.		

Cross references. — Further provisions regarding criminal penalties for actions constituting abuse of governmental office, § 16-10-1 et seq. Penalty for failure of public officer to carry out duty conferred by election laws, § 21-2-596.

RESEARCH REFERENCES

ALR. — Liability of governmental unit for intentional assault by employee other than police officer, 17 ALR4th 881.

45-11-1. Offenses involving public records, documents, and other items.

(a) If any public officer or other person shall steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, or contract; or shall knowingly and willfully take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or falsify any document or instrument recorded or any registry, acknowledgment, or certificate; or shall alter, deface, or falsify any minutes, document, book, or any proceeding whatever of or belonging to any public office within this state; or if any person shall cause or procure any of these offenses to be committed, or to be in any manner concerned therein, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment and labor in the penitentiary for not less than two years nor more than ten years.

(b) Whosoever, without authority and with the intention of converting to his own or another's use, willfully conceals any record, book, or document while on the premises of any public office or willfully removes any book, document, record, or other property from any such office shall be guilty of stealing such property. Proof of the concealment of such record or other

office property while still on the premises shall be prima-facie evidence of intent to steal.

(c) A public officer or employee may detain and question any person whose conduct causes reasonable ground for suspicion that such person is engaging in stealing or criminal damage to the records in a public office.

(d) A public officer or employee causing the arrest or detention of any person pursuant to this Code section shall not be held civilly liable for slander, malicious prosecution, false imprisonment, malicious arrest, assault and battery of the person, physical injuries and mental suffering, or any other suit for damages arising from such arrest, whether such arrest takes place on the public property or after close pursuit from such premises by such officer; provided, however, that, in causing the arrest of such person, the officer or employee had probable cause at the time of such arrest to believe that the person was committing unlawful acts relating to public documents and the arrest and detention were under reasonable circumstances.

(e) As used in this Code section, the term:

(1) "Records, books, documents, or other office property" means, but is not limited to, all books, plates, pictures, photographs, films, engravings, paintings, drawings, maps, newspapers, magazines, pamphlets, broadsides, personal papers, organization records, documents, letters, public records, microforms, sound recordings, audiovisual materials in any format, magnetic or other tapes, electronic data processing records, artifacts, or other documentary, written, or printed material, regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of any public office;

(2) "Public office" means any office held, used, or controlled for public purposes by any department, agency, board, or branch of state, county, or municipal government without reference to the ownership of the building or of the realty on which it is situated. Such term includes any archives, library, or records storage area maintained by such governments;

(3) "Avoid" means to annul, cancel, make void, destroy the efficacy of, or destroy without authority any record, book, document, or other office property;

(4) "Public officer or employee" means any officer or employee having custody of or responsibility for any records, books, documents, or other office property referred to in this Code section. (Laws 1833, Cobb's 1851 Digest, p. 805; Code 1863, § 4366; Code 1868, § 4404; Code 1873, § 4471; Code 1882, § 4471; Penal Code 1895, § 280; Penal Code 1910, § 284; Code 1933, § 89-9903; Ga. L. 1977, p. 568, § 1.)

JUDICIAL DECISIONS

Protection only to property of public office. — In view of the history of O.C.G.A. § 45-11-1 and the language of the section itself, it was enacted as a protection alone to records, books, papers, etc., belonging to

public offices within this state. *Brusnighan v. State*, 86 Ga. App. 340, 71 S.E.2d 698 (1952).

Cited in *Matthews v. Reid*, 94 Ga. 461, 19 S.E. 247 (1894); *Ledford v. State*, 19 Ga. App. 610, 91 S.E. 924 (1917).

OPINIONS OF THE ATTORNEY GENERAL

Correction or amendment of records not prohibited. — As part of the ordinary operation of state government, public records have to be corrected, updated or amended to show present facts and from reading O.C.G.A. § 45-11-1, it does not appear that the General Assembly intended to impede the ordinary operation of state government; but rather, it appears that the General As-

sembly intended to prohibit persons from wrongfully taking or wrongfully altering public records to reflect false information; therefore, O.C.G.A. § 45-11-1 does not prohibit the correcting, updating or amending of public records under the direction of the public official charged with the duty and responsibility of maintaining those records. 1978 Op. Att'y Gen. No. 78-38.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 12, 13.

C.J.S. — 76 C.J.S., Records, § 57 et seq.

ALR. — What amounts to asportation which will support charge of larceny, 19 ALR 724; 144 ALR 1383.

Statute relating to offense of misappropri-

ating or embezzling public money or property as applicable to one not in possession, 128 ALR 1373.

What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense, 75 ALR4th 1067.

45-11-2. Selling office or dividing fees.

If any person who has been elected to any office shall sell or farm out said office; or if any person shall purchase or agree to give any money or other thing of value to a person elected for the privilege of exercising the duties of said office; or if any person shall promise or agree to divide the profits, fees, or emoluments of said office with the person so elected, he shall be guilty of a felony and, upon conviction thereof, shall be punished by confinement and labor in the penitentiary for not less than one year nor more than three years. (Ga. L. 1871-72, p. 285, §§ 1, 2; Code 1873, § 4472; Code 1882, § 4472; Penal Code 1895, § 281; Penal Code 1910, § 285; Code 1933, § 89-9904.)

Cross references. — Buying or selling of votes, § 21-2-570.

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Payment of deputy out of fees. — An agreement to pay a deputy out of the fees and profits of the office is not opposed to

O.C.G.A. § 45-11-2. *Bynum v. Knighton*, 137 Ga. 250, 73 S.E. 400, 1913A Ann. Cas. 903 (1911).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 256.

45-11-3. Assault under color of office.

Any officer of this state who shall assault or beat any individual under color of his office or commission without a lawful justification to do so shall be guilty of a misdemeanor. (Laws 1833, Cobb's 1851 Digest, p. 806; Code 1863, § 4371; Code 1868, § 4409; Code 1873, § 4477; Code 1882, § 4477; Penal Code 1895, § 284; Penal Code 1910, § 288; Code 1933, § 89-9906.)

Cross references. — Prohibition of corporal punishment of inmates, § 42-5-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 369, 374.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 258.

ALR. — What constitutes offense of official oppression, 83 ALR2d 1007.

Right of peace officer to use deadly force in attempting to arrest fleeing felon, 83 ALR3d 174.

45-11-4. Unprofessional conduct; misdemeanor; applicability; indictment.

(a) As used in this Code section, the term:

(1) "County officer" shall mean any elected county officer, including the judge of the probate court, clerk of the superior court, tax receiver, tax collector, and tax commissioner where such office has replaced the tax receiver and tax collector, and any county commissioner.

(2) "Municipal officer" shall mean any mayor or elected member of any municipal governing authority.

(3) "Public officer" shall mean a county officer, a municipal officer, and state officials as provided in Code Section 45-15-11.

(b) A public officer may be charged under this Code section for:

(1) Malpractice, misfeasance, or malfeasance in office;

(2) Using oppression or tyrannical partiality in the administration or under the color of his or her office;

(3) When required by law, willfully refusing or failing to preside in or hold his or her court at the regular terms thereof, or when it is his or her duty under the law to do so;

(4) Using any other deliberate means to delay or avoid the due course or proceeding of law; or

(5) Willfully and knowingly demanding more cost than he or she is entitled to by law in the administration and under color of his or her office.

(c) A conviction for violating subsection (b) of this Code section shall be punished as for a misdemeanor and, upon conviction in a court of competent jurisdiction, the accused shall be removed from office.

(d) This Code section shall only apply to a public officer charged under subsection (b) of this Code section. This Code section shall not apply when a public officer is charged with any other crime alleged to have occurred while such official was in the performance of an official duty.

(e) This Code section shall only apply to a public officer holding office at the time of indictment and not to former office holders.

(f) Any indictment brought pursuant to subsection (b) of this Code section shall specially set forth the merits of the complaint against the accused public officer. A copy of the proposed bill of indictment shall be served on the accused public officer at least 15 days before it is presented to the grand jury.

(g) The accused shall have the right to appear before the grand jury to make such sworn statement as he or she shall desire at the conclusion of the presentation of the state's evidence. The accused shall not be subject to examination, either direct or cross, and shall not have the right individually or through his or her counsel to examine the state's witnesses. The accused and his or her counsel shall have the right to be present during the presentation of all evidence and alleged statements of the accused on the proposed indictment, presentment, or accusation, after which the accused and his or her counsel shall retire instantaneously from the grand jury room to permit the grand jury to deliberate upon the indictment.

(h) At any time during the presentation of evidence or during deliberations, the grand jury may amend the indictment or instruct the district attorney to cause a new indictment to be drawn as in any other case. In such case, a copy of the amendment or new indictment, if it relates to the accused public official, shall be provided to the accused public official and his or her counsel.

(i) If a true bill is returned by the grand jury, the indictment shall, as in other cases, be published in open court and shall be placed on the superior court criminal docket of cases to be tried by a petit jury. (Laws 1833, Cobb's 1851 Digest, pp. 644, 809; Code 1863, § 4391; Ga. L. 1865-66, p. 233, § 1; Code 1868, § 4432; Ga. L. 1873, p. 23, § 1; Code 1873, § 4504; Code 1882, § 4504; Ga. L. 1895, p. 63, § 1; Penal Code 1895, §§ 291, 292; Penal Code 1910, §§ 295, 296; Code 1933, §§ 89-9907, 89-9908; Ga. L. 1967, p. 858, § 1; Ga. L. 1975, p. 1325, § 1; Ga. L. 1983, p. 884, § 3-33; Ga. L. 1984, p. 22, § 45; Ga. L. 1988, p. 298, § 1; Ga. L. 1990, p. 1969, § 1; Ga. L. 2001, p. 487, § 3.)

The 2001 amendment, effective April 20, 2001, rewrote this Code section.

History of section. — This section is partially derived from the decision in *Kent v. State*, 18 Ga. App. 30, 88 S.E. 913 (1916).

Cross references. — Indictment of peace officer for crime in performance of duties, § 17-7-52. Affording of rights provided by section to state official charged by indictment with misfeasance or malfeasance in office, § 45-15-11.

Editor's notes. — Ga. L. 2001, p. 487, § 1, not codified by the General Assembly, pro-

vides that: "This Act shall be known and may be cited as the 'Corruption Prevention Act.'"

Ga. L. 2001, p. 487, § 6, not codified by the General Assembly, provides that the provisions of Sections 3 and 4 of the Act shall apply to crimes committed before, on, and after April 20, 2001.

Law reviews. — For article, "Georgia Local Government Officials and the Grand Jury," see 26 Ga. St. B.J. 50 (1989). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

OFFICIALS INCLUDED

INDICTMENT AND RIGHT TO HEARING

MALPRACTICE IN OFFICE

General Consideration

Constitutionality. — The constitutionality of O.C.G.A. § 45-11-4 has been upheld, on the reasoning that public officials, who are peculiarly subject to complaint as to performance of their duties, may appear before the grand jury in the interest of preventing indictment on frivolous accusations. *Mapp v. State*, 204 Ga. App. 647, 420 S.E.2d 615 (1992).

O.C.G.A. § 45-11-4 not unconstitutionally vague or indefinite. — O.C.G.A. § 45-11-4 is not unconstitutional for the reason that the expression "malpractice in office" is too vague and indefinite to apprise the defendant of the conduct proscribed by O.C.G.A. § 45-11-4 because the expression is made sufficiently definite by construing O.C.G.A. § 45-11-4 in connection with the laws defining the official's duties. *Steele v. State*, 227 Ga. 653, 182 S.E.2d 475 (1971).

The question as to whether malpractice has been committed can only be answered by considering the laws defining the particular official's duties along with the malpractice statute; only by reading those provisions into O.C.G.A. § 45-11-4 is it made sufficiently definite to satisfy the requirements of a valid penal statute. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942); *Phillips v.*

State, 127 Ga. App. 499, 194 S.E.2d 278 (1972).

No equal protection violation. — Conspiracy to commit murder is in no way similar to any crime for which a public officer would be entitled to appear before a grand jury; and thus O.C.G.A. § 45-11-4 does not violate the equal protection rights of a defendant so charged, under either the federal or the state Constitution. *Orkin v. State*, 236 Ga. 176, 223 S.E.2d 61 (1976).

O.C.G.A. § 45-11-4, by affording only certain enumerated officials the privilege of appearing before the grand jury prior to indictment, does not violate the equal protection clauses of the state and federal constitutions. *State v. Deason*, 259 Ga. 183, 378 S.E.2d 120 (1989).

Purpose of O.C.G.A. § 45-11-4. — It is apparent that the legislature intended by this enactment to require faithfulness to public trust upon the part of the officials therein named. To secure this conduct the officials not only are required to perform the acts required of them by law, but are equally forbidden to commit under the color of office acts not authorized by law. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942).

Grand jury power not limited. — It was not the intention to limit the power of the

grand jury to cases in which there should be a prosecutor. *Groves v. State*, 73 Ga. 205 (1884).

Rational basis for special protection of officials. — The dual dangers that the grand jury will be influenced by extra-legal, political considerations to return an unfounded indictment against a public official and that such indictment will cause disrespect of the public office are legitimate concerns of the state, providing a rational basis on which it could provide special protection from unfounded malfeasance in office charges or indictments of its commissioned officials, county judges, justices of the peace, and county commissioners. The procedures of O.C.G.A. § 45-11-4 are the means of effecting this policy. *Sweeney v. Balkcom*, 358 F.2d 415 (5th Cir. 1966).

Cumulative methods for removal. — The constitutional and legislative method for removing officers do not conflict with O.C.G.A. § 45-11-4, they are cumulative. *Kent v. State*, 18 Ga. App. 30, 88 S.E. 913 (1916).

A special law for the removal of certain county commissioners by the judge of the superior court is not invalid as controverting O.C.G.A. § 45-11-4. *Smith v. Duggan*, 153 Ga. 463, 112 S.E. 458 (1922).

O.C.G.A. § 45-15-11 was enacted pursuant to the provisions of O.C.G.A. § 45-11-4, and is applicable only to state officials who hold an office created under the Constitution or laws of this state. *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961).

Punishment upon conviction. — O.C.G.A. § 45-11-4 means that any of the officers charged with the offense therein named shall, upon a legal conviction in a court having jurisdiction, be punished as for a misdemeanor and removed from office. *Cargile v. State*, 194 Ga. 20, 20 S.E.2d 416, answer conformed to, 67 Ga. App. 610, 21 S.E.2d 326 (1942).

Cited in *Moore v. State*, 64 Ga. App. 171, 12 S.E.2d 410 (1940); *Cadle v. State*, 101 Ga. App. 175, 113 S.E.2d 180 (1960); *Phillips v. State*, 229 Ga. 313, 191 S.E.2d 61 (1972); *Lowndes County v. Dasher*, 229 Ga. 289, 191 S.E.2d 82 (1972); *White v. State*, 132 Ga. App. 62, 207 S.E.2d 577 (1974); *State v. Hollomon*, 132 Ga. App. 304, 208 S.E.2d 167 (1974); *Holloman v. State*, 133 Ga. App. 275, 211 S.E.2d 312 (1974); *White v. State*, 233

Ga. 593, 212 S.E.2d 777 (1975); *Popham v. State*, 138 Ga. App. 876, 227 S.E.2d 825 (1976); *Reed v. State*, 148 Ga. App. 264, 251 S.E.2d 148 (1978); *Thompson v. Macon-Bibb County Hosp. Auth.*, 246 Ga. 777, 273 S.E.2d 19 (1980); *Knowles v. State*, 159 Ga. App. 239, 283 S.E.2d 51 (1981); *Quillan v. State*, 160 Ga. App. 167, 286 S.E.2d 503 (1981); *Palmer v. Wilkins*, 163 Ga. App. 104, 294 S.E.2d 355 (1982); *Cook v. State*, 256 Ga. 808, 353 S.E.2d 333 (1987); *Tostensen v. State*, 190 Ga. App. 423, 379 S.E.2d 9; *Powell v. State*, 191 Ga. App. 616, 382 S.E.2d 634 (1989); *Sauls v. State*, 220 Ga. App. 115, 468 S.E.2d 771 (1996).

Officials Included

Peace officers. — When the General Assembly modified O.C.G.A. § 45-11-4 in 1990 to make plain that its protections encompassed those formerly in office, it fully realized that O.C.G.A. § 17-7-52 mandated that such protections be extended to peace officers. *Dudley v. State*, 273 Ga. 466, 542 S.E.2d 99 (2001).

O.C.G.A. § 45-11-4 applicable only to probate judges, county commissioners, and justices of the peace. — O.C.G.A. § 45-11-4 does not appear to apply to all government employees per se, but to probate judges, county commissioners, and justices of the peace who are charged with malpractice in office. *Wages v. State*, 165 Ga. App. 587, 302 S.E.2d 112 (1983) (decided prior to the 1983 amendment, which deleted the reference to justices of the peace, prior to the 1988 amendment, which made O.C.G.A. § 45-11-4 also applicable to mayors and members of municipal governing authorities and prior to the 1990 amendment, which, in part, further broadened the applicability of O.C.G.A. § 45-11-4).

County commissioners and notaries public. — O.C.G.A. § 45-11-4 applies to county commissioners, and since notaries public are ex officio justices of the peace they are also included in O.C.G.A. § 45-11-4. *Dyer v. State*, 7 Ga. App. 58, 65 S.E. 1089 (1909).

O.C.G.A. § 45-11-4 applies to deputy warden and correctional officers. — Deputy warden and correctional officers are by virtue of their employment to be considered as peace officers while performing their duties; they are, like other public servants charged with acts of tyranny and oppression

Officials Included (Cont'd)

mentioned in O.C.G.A. § 45-11-4, entitled to appear before grand jury to extent permitted by O.C.G.A. § 45-11-4. *State v. Roulain*, 159 Ga. App. 233, 283 S.E.2d 89 (1981).

Police officer may be charged with a misdemeanor by accusation in state court. *Sanderson v. State*, 217 Ga. App. 51, 456 S.E.2d 667 (1995).

O.C.G.A. § 45-11-4 inapplicable to official resigning position prior to indictment. — As O.C.G.A. § 45-11-4 applies to state officials, a court clerk who resigned post prior to the institution of any proceedings against the clerk is not covered. To be eligible for the provisions of O.C.G.A. § 45-11-4, a party must be a state official when an indictment is presented. *Axson v. State*, 174 Ga. App. 236, 329 S.E.2d 566 (1985).

Where a defendant was an investigator for the district attorney when the criminal acts at issue occurred, but had been discharged from that position prior to indictment, there was no merit in defendant's argument that the protections of O.C.G.A. § 17-7-52 and O.C.G.A. § 45-11-4 should be extended to one who is charged with official misdeeds but who is no longer employed as a government official or peace officer when proceedings against that former official are commenced. *Lundy v. State*, 195 Ga. App. 682, 394 S.E.2d 559 (1990).

A councilman of a municipality is simply not one of the officials covered by O.C.G.A. § 45-11-4. *Humphrey v. State*, 231 Ga. 855, 204 S.E.2d 603, cert. denied, 419 U.S. 839, 95 S. Ct. 68, 42 L. Ed. 2d 66 (1974).

No special privileges for officer charged with crime. — Where the special presentment in a conspiracy to defraud a county case does not charge a superior court judge with malfeasance or malpractice in office, the judge was not entitled, merely by virtue of the fact of occupying a high office in the state, to the special privileges accorded the holders of such offices under the provisions of O.C.G.A. § 45-11-4. *Clinkscales v. State*, 102 Ga. App. 670, 117 S.E.2d 229 (1960).

Where a county officer is indicted for a crime, but not specifically the crime of malpractice in office under O.C.G.A. § 45-11-4, and the crime charged does not by its statutory definition include an act of malfeasance or malpractice in office as a necessary ingre-

dient thereof, such public officer is not entitled to the privileges of O.C.G.A. § 45-11-4. Under these circumstances, the fact that the indictment alleges, or in proving the crime charged the proof would show, that in committing the crime charged the defendant committed an act which would constitute malpractice in office would not make the indictment one so charging defendant under O.C.G.A. § 45-11-4. *Abercrombie v. State*, 125 Ga. App. 402, 188 S.E.2d 160 (1972).

Indictment provisions of O.C.G.A. § 45-11-4 inapplicable to police officers involved in burglary. — O.C.G.A. §§ 17-7-52 and provisions of O.C.G.A. § 45-11-4 regarding indictment do not apply to defendants employed as city police officers and who, while in uniform during hours on duty, transported certain confederates to a private building for purpose of burglarizing it. *Mize v. State*, 152 Ga. App. 190, 262 S.E.2d 492 (1979); *Morrill v. State*, 216 Ga. App. 468, 454 S.E.2d 796 (1995).

Indictment and Right to Hearing

O.C.G.A. § 45-11-4 provides the public official defendant two important rights: (1) the right to be served with a copy of the indictment prior to its being laid before the grand jury, and (2) the right to appear with witnesses before and to be heard by the grand jury. *Sweeney v. Balkcom*, 358 F.2d 415 (5th Cir. 1966).

Contents of indictment. — O.C.G.A. § 45-11-4 means that there must be set forth in the indictment a detailed statement of the facts upon which the charge is predicated. *Morris v. State*, 59 Ga. App. 804, 2 S.E.2d 240 (1939).

The fact that the indictment fails to charge that the defendant received any benefit from the commission of defendant's alleged unlawful and fraudulent acts and conduct is immaterial. *Morris v. State*, 59 Ga. App. 804, 2 S.E.2d 240 (1939).

Motion to quash indictment denied. — Where a police officer raped a woman in his custody, he was properly denied the protection of being permitted to be present and to make a sworn statement when the case was presented to the grand jury, since the performance of official duties does not include rape. *Gober v. State*, 203 Ga. App. 5, 416 S.E.2d 292, cert. denied, 203 Ga. App. 906, 416 S.E.2d 292 (1992).

Notice of grand jury hearing. — There is no statutory time requirement, within which notice of the grand jury hearing must be given, set forth in O.C.G.A. § 45-11-4, and the five-day rule required under O.C.G.A. § 9-11-6 is not applicable since that rule applies only to court hearings on motions, and an appearance before a grand jury is not a hearing on a motion. *Creamer v. State*, 150 Ga. App. 458, 258 S.E.2d 212 (1979).

There is no statutory time requirement set forth in O.C.G.A. § 45-11-4 as to when notice of the grand jury hearing must be given. *McWilliams v. State*, 177 Ga. App. 447, 339 S.E.2d 721 (1985).

Waiver of grand jury appearance. — A defendant justice of the peace indicted for false swearing who waived copy of indictment, list of witnesses, formal arraignment, and who pleaded not guilty at the call of the case, waived the right to appear before a grand jury under O.C.G.A. § 45-11-4. *Fancher v. State*, 113 Ga. App. 195, 147 S.E.2d 463 (1966).

Defendant had no right to appear before grand jury. — O.C.G.A. § 45-11-4 is not involved where the police officer did not appear before the grand jury in connection with an accusation against himself, but appeared before the grand jury as a prosecution witness for the state, thus the criminal defendant had no right to appear. *Mapp v. State*, 204 Ga. App. 647, 420 S.E.2d 615 (1992).

Accused has no right under O.C.G.A. § 45-11-4 to cross-examine witnesses or present own witnesses. *McWilliams v. State*, 177 Ga. App. 447, 339 S.E.2d 721 (1985).

Malpractice in Office

The word “malpractice” generally means evil, bad, or wrong practice, and when applied as in O.C.G.A. § 45-11-4, to public officers and restricted to official acts by the words “in office,” it retains its meaning of bad or evil, and is applied to official acts. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942); *Clinkscales v. State*, 102 Ga. App. 670, 117 S.E.2d 229 (1960).

Malpractice in office relating to county commissioners, as used in O.C.G.A. § 45-11-4, means a wrongful or unjust doing of an act which the doer has no right to do, or failure to do what the law makes it the commissioner’s duty to do, with evil intent or

motive or due to culpable neglect. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942); *Phillips v. State*, 127 Ga. App. 499, 194 S.E.2d 278 (1972).

O.C.G.A. § 45-11-4 provides for official not individual misbehavior, and rudeness of an officer will not constitute misconduct unless it amounts to oppression under color of title. *Lancaster v. Hill*, 136 Ga. 405, 71 S.E. 731, 1912C Ann. Cas. 272 (1911).

O.C.G.A. § 45-11-4 is available only when the public official is charged with malfeasance, or malpractice, in office, and the courts hold that such an offense is committed only when there is a close connection between the wrongful acts and the defendant’s performance of official duties. *Sweeney v. Balkcom*, 358 F.2d 415 (5th Cir. 1966).

Malpractice is a question of fact for the jury. *Russell v. State*, 57 Ga. 420 (1876).

It is the duty of a grand juror to divulge knowledge of the existence of malpractice. *Groves v. State*, 73 Ga. 205 (1884).

Valid instruction covering corruption. — A charge that, to warrant a conviction, it must appear that the magistrate wilfully and knowingly demanded and received more costs than the magistrate was entitled to, covers the point that it was corruptly done; and the refusal to charge, that it must have been corruptly done, will not require a new trial. *Ridenhour v. State*, 75 Ga. 382 (1885).

Charge and receipt of unlawful fees. — Any county commissioner who knowingly and willfully assists another public officer in charging and receiving unlawful fees is guilty of malpractice in office and of violating the provisions of O.C.G.A. § 45-11-4. *Cargile v. State*, 67 Ga. App. 610, 21 S.E.2d 326 (1942).

False swearing in connection with the collection of criminal fees would fall into the category of misfeasance or malfeasance by a justice of the peace. *Fancher v. State*, 113 Ga. App. 195, 147 S.E.2d 463 (1966).

Actions not constituting violation. — Since the legislature has not seen fit to prohibit county officials from obtaining personal goods or services through the mechanism of the county’s name or from sending county employees on personal errands, county officials who take such actions do not violate O.C.G.A. § 45-11-4. *Phillips v. State*, 127 Ga. App. 499, 194 S.E.2d 278 (1972).

Indictment charging county commis-

Malpractice in Office (Cont'd)

sioner with malpractice in office for allowing county trucks to be used for private business was properly dismissed, where the statutes outlining the commissioner's duties did not forbid the use of public property for private purposes and the commissioner therefore was not clearly informed that actions were criminal. *State v. Burrell*, 189 Ga. App. 812, 377 S.E.2d 898 (1989).

Gratuity given to private association. — Indictment which alleged that county com-

missioner of roads and revenues donated and gave a gratuity to a VFW Post, a private association, in the form of asphalt, labor from county employees, and the use of county equipment in the grading and preparation of the parking lot for which the county was not compensated or reimbursed and from which the county received no substantial benefit, adequately alleged a violation of O.C.G.A. § 45-11-4 for malpractice in office. *Kennedy v. State*, 205 Ga. App. 152, 421 S.E.2d 560, cert. denied, 205 Ga. App. 900, 421 S.E.2d 560 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — The Georgia Crime Information Center is authorized to collect and file fingerprints of persons charged with

a violation of O.C.G.A. § 45-11-4(b). 2001 Op. Att'y Gen. No. 2001-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369 et seq., § 410.

C.J.S. — 67 C.J.S., Records, § 258.

ALR. — What constitutes offense of official oppression, 83 ALR2d 1007.

Validity and construction of statutes permitting grand jury witnesses to be accompanied by counsel, 90 ALR3d 1340.

45-11-5. Extortion generally.

(a) As used in this Code section, the term "extortion" means an unlawful taking by a public officer, under color of his office, from any person of any money or thing of value that is not due to him or more than is due to him.

(b) Any public officer who shall by himself, his deputy, his agent, or other person employed by him be guilty of extortion in demanding or receiving other and greater fees than by law are allowed him shall be guilty of a misdemeanor and shall be dismissed from office. (Laws 1833, Cobb's 1851 Digest, p. 809; Code 1863, §§ 4393, 4394; Code 1868, §§ 4434, 4435; Code 1873, §§ 4507, 4508; Code 1882, §§ 4507, 4508; Penal Code 1895, §§ 298, 299; Penal Code 1910, §§ 302, 303; Code 1933, §§ 89-9909, 89-9910; Ga. L. 1990, p. 8, § 45.)

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The offense of extortion consists of the oppressive misuse of official power by the exaction of money. Where an officer thought there was a right to accept a cash bond, the officer was not guilty of extortion because intent to commit the crime is nec-

essary. *Holt v. State*, 11 Ga. App. 34, 74 S.E. 560 (1912).

Cited in *White v. State*, 56 Ga. 385 (1876); *Lancaster v. Hill*, 136 Ga. 405, 71 S.E. 731, 1912C Ann. Cas. 272 (1911).

RESEARCH REFERENCES

Am. Jur. 2d. — 31A Am. Jur. 2d, Extortion, Blackmail, and Threats, § 1 et seq.

C.J.S. — 35 C.J.S., Extortion, § 1 et seq., § 17.

ALR. — Construction and scope as regards purpose or object for which funds are solicited or received, of statute prohibiting solicitation or acceptance of subscriptions or contributions by public officers or employees, 85 ALR 1146.

What constitutes the taking of money or other thing of value under color of office, 70 ALR3d 1153.

Truth as defense to state charge of criminal intimidation, extortion, blackmail, threats, and the like, based upon threats to disclose information about victim, 39 ALR4th 1011.

Construction and application of § 2C1.1 of United States Sentencing Guidelines (18 USCS APPX § 2C1.1) pertaining to offenses involving public officials offering, giving, soliciting, or receiving bribes, or extortion under color of official right, 144 ALR Fed. 615.

45-11-6. Demanding more than legal fees for advertising.

Any judge of the probate court, sheriff, coroner, clerk, marshal, or other officer who shall receive, collect, or demand other and greater fees for any legal advertising than are provided by law shall be guilty of extortion as defined in Code Section 45-11-5 and shall be punished as provided in that Code section. (Ga. L. 1878-79, p. 81, § 2; Code 1863, § 3634; Code 1868, § 3659; Code 1882, § 3704b; Penal Code 1895, § 303; Penal Code 1910, § 307; Code 1933, § 89-9911; Ga. L. 1990, p. 8, § 45.)

Cross references. — Rates for legal advisements, § 9-13-143.

RESEARCH REFERENCES

Am. Jur. 2d. — 31A Am. Jur. 2d, Extortion, Blackmail, and Threats, §§ 7-10.

C.J.S. — 35 C.J.S., Extortion, §§ 8, 11.

ALR. — Construction and application of § 2C1.1 of United States Sentencing Guide-

lines (18 USCS APPX § 2C1.1) pertaining to offenses involving public officials offering, giving, soliciting, or receiving bribes, or extortion under color of official right, 144 ALR Fed. 615.

45-11-7. Retaining compensation for legal advertisements.

If any officer shall directly or indirectly demand or retain as a commission any part of the compensation allowed by law to publishers for publishing legal advertisements, he shall be guilty of extortion as defined in Code Section 45-11-5 and shall be punished as provided in that Code section. (Ga. L. 1878-79, p. 81, § 14; Code 1882, § 3704d; Penal Code 1895, § 304; Penal Code 1910, § 308; Code 1933, § 89-9912.)

RESEARCH REFERENCES

Am. Jur. 2d. — 31A Am. Jur. 2d, Extortion, Blackmail, and Threats, §§ 7-10.

C.J.S. — 35 C.J.S., Extortion, §§ 8, 11.

ALR. — Construction and application of § 2C1.1 of United States Sentencing Guidelines (18 USCS APPX § 2C1.1) pertaining to

offenses involving public officials offering, giving, soliciting, or receiving bribes, or ex-
tortion under color of official right, 144 ALR Fed. 615.

45-11-8. Engaging in bail bond business.

(a) It shall be unlawful for any elected official, officer of the court, law enforcement officer, or attorney in this state to engage either directly or indirectly in the bail bond business.

(b) Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1972, p. 403, §§ 1, 2; Ga. L. 1986, p. 303, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Prohibition of O.C.G.A. § 45-11-8 pertains to engaging in professional bail bonds- **man business as defined under O.C.G.A. § 17-6-50.** 1980 Op. Att'y Gen. No. 80-85.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 369.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 257.

ALR. — Validity of statute abolishing commercial bail bond business, 19 ALR4th 355.

45-11-9. Discrimination against optometrists or physicians in suggestions for visual care.

(a) It shall be unlawful for any state board, body, agency, or institution or any public official to discriminate against optometrists licensed under Chapter 30 of Title 43 or against physicians licensed under Chapter 34 of Title 43 in the suggestion or recommendation for visual care which is within the scope of the practice licensed by those chapters.

(b) Nothing contained in this Code section shall be construed to prevent a person having custodial care of another person from referring such person to the practitioner of his choice.

(c) Nothing contained in this Code section shall be construed to prevent a physician from referring patients to any practitioner of his choice. (Ga. L. 1976, p. 474, §§ 1-3.)

OPINIONS OF THE ATTORNEY GENERAL

State agency maintaining self-insured health plan for employees cannot exclude optometrists' services from coverage. — For state agency maintaining self-insured health plan for its employees to exclude coverage of optometrists' visual care services within scope of their licensed practice is inconsis-

tent with O.C.G.A. § 45-11-9. 1981 Op. Att'y Gen. No. U81-51.

Optometrists to receive reimbursement for services reimbursable to ophthalmologists. — The Department of Medical Assistance (now Department of Community Health) is required to reimburse optome-

trists for reasonable, necessary, and otherwise allowable diagnostic services within the scope of their licensed practice that are also reimbursable to ophthalmologists. 1983 Op. Att’y Gen. No. 83-27.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Physicians, Surgeons, and Other Healers, § 29.
C.J.S. — 70 C.J.S., Physicians and Surgeons, §§ 10, 15.
ALR. — Exclusion of or discrimination against a physician or surgeon by hospital, 37 ALR3d 645; 28 ALR5th 107.

45-11-10. Coercion of other officer or employee to give anything of value for political purposes.

- (a) It shall be unlawful for any officer or employee of this state to coerce or attempt to coerce or command directly or indirectly any other state officer or employee to pay, lend, or contribute any part of his salary or to kick back any sum of money or anything else of value to any party, committee, organization, agency, or person for political purposes.
- (b) It shall be unlawful for any officer or employee of any county, municipal corporation, school district, or other political subdivision to coerce or attempt to coerce or command directly or indirectly any other officer or employee of such political subdivision to pay, lend, or contribute any part of his salary or to kick back any sum of money or anything else of value to any party, committee, organization, agency, or person for political purposes.
- (c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor. (Ga. L. 1977, p. 1035, §§ 1, 2; Ga. L. 1985, p. 617, § 1.)

JUDICIAL DECISIONS

Cited in Caldwell v. Bateman, 252 Ga. 144, 312 S.E.2d 320 (1984).

RESEARCH REFERENCES

Am. Jur. 2d. — 31A Am. Jur. 2d, Extortion, Blackmail, and Threats, §§ 7-10. 63C Am. Jur. 2d, Public Officers and Employees, § 369.
C.J.S. — 35 C.J.S., Extortion, § 1 et seq.
ALR. — Construction and scope as regards purpose or object for which funds are solicited or received, of statute prohibiting solicitation or acceptance of subscriptions or contributions by public officers or employees, 85 ALR 1146.
Construction and application of § 2C1.1 of United States Sentencing Guidelines (18 USCS APPX § 2C1.1) pertaining to offenses involving public officials offering, giving, soliciting, or receiving bribes, or extortion under color of official right, 144 ALR Fed. 615.

CHAPTER 12

GOVERNOR

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Cross references. — Constitutional provisions relating to Governor, see Ga. Const. 1983, Art. V, Sec. I and Sec. II. Penalty for unauthorized display of sign, tag, etc., on motor vehicle so as to convey impression

that owner of motor vehicle is member of Governor's staff, § 45-1-3. Organization of executive branch of state government generally, Ch. 4, T. 50.

OPINIONS OF THE ATTORNEY GENERAL

Correctional industries administration is "authority" and not "budget unit." — The Georgia Correctional Industries Administration is an authority and is not a "budget

unit" required to request and follow a budget established by appropriations in accord with the Budget Act. 1989 Op. Att'y Gen. No. 89-56.

ARTICLE 1

GENERAL PROVISIONS

45-12-1. Election.

The Governor shall be elected quadrennially in the manner provided by Article V of the Constitution of Georgia and shall be installed in office by the General Assembly. The General Assembly shall be the sole judge of his election and qualifications. (Orig. Code 1863, § 1243; Code 1868, § 1324; Code 1873, § 1298; Code 1882, § 1298; Civil Code 1895, § 81; Civil Code 1910, § 95; Code 1933, § 40-101; Ga. L. 1949, p. 948, § 1; Ga. L. 1972, p. 1015, § 201.)

Law reviews. — For article reviewing the history of the Georgia Legislature's involvement in the selection of a Governor, see 22 Mercer L. Rev. 1 (1971).

JUDICIAL DECISIONS

Cited in Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939); Stephens v. Reid, 189 Ga. 372, 6 S.E.2d 728 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 2. **C.J.S.** — 67 C.J.S., Officers, § 35. 81A C.J.S., States, § 84.

45-12-2. Inauguration.

The ceremony of inauguration shall take place during the first week of the first session of the General Assembly after the election and on such day of that week as the General Assembly, by joint resolution, shall appoint. If the General Assembly fails to appoint the day, the inauguration ceremony shall take place at 12:00 Noon on Saturday of that week unless prevented by providential cause. The Governor shall begin the discharge of his duties from the time of his inauguration. (Orig. Code 1863, § 56; Code 1868, § 52; Code 1873, § 49; Code 1882, § 49; Civil Code 1895, § 116; Civil Code 1910, § 139; Code 1933, § 40-103; Ga. L. 1949, p. 948, § 2.)

JUDICIAL DECISIONS

Method of filling vacancy. — The General Assembly has considered that even as to an election to fill a vacancy in the office of Governor, ascertainment and declaration of the result should be made by that body, according to the regular method of filling the office permanently. Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 2. **C.J.S.** — 67 C.J.S., Officers, § 45. 81A C.J.S., States, § 84.

45-12-3. Entry of inauguration upon House journal; evidence of Governor's right, title, eligibility, and qualification.

The fact of such inauguration of the Governor shall be entered upon the journal of the House of Representatives and shall be conclusive evidence of his right and title to the office and of his eligibility and qualification. (Ga. L. 1949, p. 948, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 2. **C.J.S.** — 67 C.J.S., Officers, § 45. 81A C.J.S., States, § 91.

45-12-4. Oath of office.

The Governor-elect shall, before he enters on the duties of his office, take the following oath in the presence of the General Assembly in joint session of the Senate and House of Representatives:

“I do solemnly swear or affirm that I will faithfully execute the office of Governor of the State of Georgia and will, to the best of my ability, preserve, protect, and defend the Constitution thereof and the Constitution of the United States.”

Upon so taking the oath, the Governor-elect shall become Governor. The Lieutenant Governor-elect shall take the same oath with the substitution of “Lieutenant Governor” for “Governor” and upon so taking such oath shall become Lieutenant Governor. (Orig. Code 1863, § 57; Code 1868, § 53; Code 1873, § 50; Code 1882, § 50; Civil Code 1895, § 117; Civil Code 1910, § 140; Code 1933, § 40-104; Ga. L. 1949, p. 948, § 3; Ga. L. 1983, p. 1539, § 2.)

Cross references. — [§] Oath required, Ga. Const. 1983, Art. V, Sec. I, Para. VI.

Editor’s notes. — Ga. L. 1983, p. 1539, § 1, not codified by the General Assembly,

provides that: “It is the intent of Section 2 of this Act to implement the provisions of Article V, Section I, Paragraph VI of the Constitution of the State of Georgia.”

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 2.

C.J.S. — 67 C.J.S., Officers, § 46. 81A C.J.S., States, § 91.

45-12-5. Seal.

There shall be a seal of the office of the Governor. The design shall be the same as that now used and shall not be altered except by authority of the General Assembly. (Orig. Code 1863, § 79; Code 1868, § 73; Code 1873, § 78; Code 1882, § 78; Civil Code 1895, § 142; Civil Code 1910, § 165; Code 1933, § 40-106.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 130.

45-12-6. Executive office; Governor’s residence.

The executive office of the Governor shall be in the capitol. If from any cause there is no capitol or if it is abandoned, then the executive office shall be at such place at the seat of government as the Governor may direct, and not elsewhere, unless made necessary by invasion, insurrection, pestilence, or rebellion. The Governor shall reside at the state capital during his term of office. (Orig. Code 1863, §§ 80, 81; Code 1868, §§ 74, 75; Code 1873,

§ 79; Code 1882, § 79; Civil Code 1895, § 143; Civil Code 1910, § 166; Code 1933, § 40-107.)

JUDICIAL DECISIONS

O.C.G.A. § 45-12-6 does not remove the Governor's nonofficial residence or domicile to the seat of government. *Sanders v. Harper*, 220 Ga. 649, 141 S.E.2d 156 (1965).

Cited in *Avery v. Bower*, 170 Ga. 202, 152 S.E. 239 (1930).

45-12-7. Resignation; vacancy due to other causes; Lieutenant Governor to take oath; procedure.

The Governor shall transmit his resignation to the General Assembly, if it is in session; and, if it is not in session, he shall transmit it to the Secretary of State, who shall on the same day notify the Lieutenant Governor. If the office becomes vacant because of death or any other cause when the General Assembly is not in session, the Secretary of State shall inform the Lieutenant Governor. In either case, the Lieutenant Governor shall take the oath of office within ten days after having been informed by the Secretary of State. Such oath shall be taken before any Justice of the Supreme Court or judge of any superior court and also before the General Assembly, if it is in session. Such facts shall be entered upon the minutes of the office of the Governor. If the Lieutenant Governor fails to take the oath of office within the prescribed time, he shall be considered as having resigned. In such case, or if there is no Lieutenant Governor, the Secretary of State shall inform the Speaker of the House of Representatives, and the proceedings shall be the same. (Orig. Code 1863, § 132; Code 1868, § 127; Code 1873, § 136; Code 1882, § 136; Civil Code 1895, § 231; Civil Code 1910, § 266; Code 1933, § 40-108.)

Cross references. — Vacating of office upon permanent physical or mental disability

of holder of office, Ga. Const. 1983, Art. V, Sec. IV.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 12.

C.J.S. — 67 C.J.S., Officers, §§ 102-105. 81A C.J.S., States, § 97.

ALR. — Devolution, in absence of Governor, of veto and approval powers, upon Lieutenant Governor or other officer, 136 ALR 1053.

ARTICLE 2

POWERS AND DUTIES GENERALLY

Cross references. — Power of Governor to convene general courts-martial, § 38-2-390. Power of Governor to prescribe procedure in cases before military courts and other

military tribunals, § 38-2-430. Power of Governor to institute and conduct investigations into affairs of state, etc., generally, § 45-15-19.

45-12-20. Grant of commissions.

The Governor shall grant commissions to all officers, including senators and representatives in Congress, required to hold them and in all cases may, in his discretion, issue a *dedimus potestatem* to officers authorized to administer oaths requiring qualification of the officers-elect as provided by law. The forms of commissions shall be in the discretion of the Governor. Commissions thus issued shall be final, except where the Constitution and laws of Georgia shall otherwise provide. (Orig. Code 1863, § 69; Code 1868, § 63; Code 1873, § 60; Code 1882, § 60; Civil Code 1895, § 121; Civil Code 1910, § 144; Code 1933, § 40-203; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

O.C.G.A. § 45-12-20 applies to officers commissioned by the Governor, and not to municipal officers not commissioned by the Governor. *Brewer v. Johnson*, 184 Ga. 806, 193 S.E. 778 (1937).

Delegation of duties. — It is not essential that the Governor give personal attention to the details incumbent upon the Governor by O.C.G.A. § 45-12-20, the Governor may by *dedimus potestatem*, devolve the duties upon one of the officers of the state authorized to administer oaths. *Lewis v. Board of Comm'rs*, 70 Ga. 486 (1883).

Finality of commission. — The issuance of a commission is an act belonging exclusively to the Governor and cannot be inquired into by any subsequent court proceedings. Therefore, a *quo warranto* proceeding will not lie. *Corbitt v. McDaniel ex rel. Cornelius*, 77 Ga. 544, 2 S.E. 692 (1886).

Where election to a county office is evidenced by the returns alone, a commission issued by the Governor is made final by O.C.G.A. § 45-12-20, where no hearing has been sought before the Governor prior to the commission being issued. This is so whether the returns sent up are complete or incomplete. *Ginn v. Linn*, 83 Ga. 180, 9 S.E. 784 (1889).

Right of appeal. — Where every right to a commission is in the applicant, and respondent is a usurper, it cannot be said that the illegal issuance of the commission would deprive the applicant of an appeal. *Hathcock v. McGouirk*, 119 Ga. 973, 47 S.E. 563 (1904).

Cited in State ex rel. *Low v. Towns*, 8 Ga. 360 (1850); *Lowe v. Lindsey*, 223 Ga. 173, 154 S.E.2d 11 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Function of selecting officer to whom commission is to be directed lies with commissioning authority absent statute or consti-

tutional provision to contrary. 1980 Op. Att'y Gen. No. U80-48.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 128 et seq.

C.J.S. — 67 C.J.S., Officers, § 44. 81A C.J.S., States, § 91.

45-12-21. Issuance of warrants for payments from treasury.

All payments from the state treasury, unless otherwise provided, shall be made upon the warrant of the Governor, and he may withhold his approval on any account audited by the state auditor and certified by the Comptrol-

ler General. The warrant shall always specify on what appropriation or fund it is drawn. (Laws 1836, Cobb's 1851 Digest, p. 1028; Code 1863, § 77; Code 1868, § 71; Code 1873, § 76; Code 1882, § 76; Civil Code 1895, § 140; Civil Code 1910, § 163; Code 1933, § 40-204.)

JUDICIAL DECISIONS

The Comptroller General is not authorized to draw a warrant upon the State Treasurer (now director of the Office of Treasury and Fiscal Services). *Irons v. Harrison*, 185 Ga. 244, 194 S.E. 749 (1937).

Payment from specified account. — A warrant drawn by the Governor upon the State Treasurer (now director of the Office of Treasury and Fiscal Services) directing the latter to place the amount of such warrant "to the account of the school fund," is payable out of that fund as derived from the sources authorized by the constitution and the law; and it is not only the right but the duty of the State Treasurer (now director of the Office of Treasury and Fiscal Services) to so construe such a warrant. *Park v. Candler*, 113 Ga. 647, 39 S.E. 89 (1901).

Revocability of warrant. — An executive warrant upon the treasury of the state, au-

thorizing the payment of money in pursuance of an appropriation made by law, is not a contract nor in the nature of a contract, but is only a license or power, and is revocable so long as the payment which it warranted has not been made. *Fletcher v. Renfroe*, 56 Ga. 674 (1876).

If revocation cannot take place by the separate act of the Governor, it can take place by the joint act of the Governor and the General Assembly; and a resolution passed by both houses and approved by the Governor, instructing the State Treasurer (now director of the Office of Treasury and Fiscal Services) not to pay a warrant, is a virtual revocation. *Fletcher v. Renfroe*, 56 Ga. 674 (1876).

Cited in *Gregory v. Hamilton*, 215 Ga. 735, 113 S.E.2d 395 (1960); *Maddox v. Fortson*, 226 Ga. 71, 172 S.E.2d 595 (1970).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 78.

C.J.S. — 81A C.J.S., States, § 130.

45-12-22. Suspension of collection of taxes.

The Governor may suspend the collection of taxes, or any part thereof, due the state until the meeting of the next General Assembly but no longer; but he shall not otherwise interfere with the collection of taxes. (Laws 1821, Cobb's 1851 Digest, p. 1025; Code 1863, § 76; Code 1868, § 70; Code 1873, § 75; Code 1882, § 75; Civil Code 1895, § 139; Civil Code 1910, § 162; Code 1933, § 40-205.)

Cross references. — Preservation of state's sovereign right of taxation, Ga. Const. 1983, Art. VII, Sec. I, Para. I.

JUDICIAL DECISIONS

Extent of power. — O.C.G.A. § 45-12-22 does not confer upon the Governor the power to compromise or release a corporation from an ad valorem tax; the Governor

can do no more than suspend the tax until the meeting of the next General Assembly. *State v. Southwestern R.R.*, 70 Ga. 11 (1883).

Cited in *Carroll City-County Hosp. Auth.*

v. Oxford, 104 Ga. App. 213, 121 S.E.2d 387 (1961); Maddox v. Fortson, 226 Ga. 71, 172 S.E.2d 595 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Discretion to suspend collection of taxes. — The Governor under O.C.G.A. § 45-12-22 is given broad discretionary power to suspend the collection of taxes or any part thereof due the state until the next meeting of the General Assembly after such suspension. 1950-51 Op. Att'y Gen. p. 424.

No authority to extinguish tax liability. — O.C.G.A. § 45-12-22 assumes that a tax liability has lawfully accrued and that taxes are legally due the state, and the Governor has no authority to extinguish this liability; the extent of the Governor's power is to suspend the collection of it until the meeting of the next General Assembly. 1958-59 Op. Att'y Gen. p. 360.

Under the provisions of O.C.G.A. § 45-12-22, a Governor has the authority to suspend the collection of taxes until the next session of the General Assembly but is not authorized to relieve the taxpayer from any tax liability; the grant of an exemption from taxation is a legislative function which can only be exercised by the General Assembly. 1971 Op. Att'y Gen. No. 71-23.

Mere postponement of due date for taxes. — The suspension of taxes under O.C.G.A. § 45-12-22 is really just a postponement of the date upon which taxes become due and are payable. 1971 Op. Att'y Gen. No. 71-23.

Failure of legislature to ratify suspension order. — When the collection of taxes is suspended by the Governor's executive order, under O.C.G.A. § 45-12-22, until the next meeting of the General Assembly, and at the next meeting of the General Assembly such executive order fails of ratification, the taxes which would otherwise have been due

and collectible thereupon become due and payable. 1958-59 Op. Att'y Gen. p. 360.

The General Assembly may ratify the Governor's order and make the relief permanent, but if legislative ratification is not forthcoming at the meeting of the next General Assembly the effect of the Governor's order of suspension, by the express language of the statute, terminates, leaving the taxpayer exposed to, and without any relief against, the usual processes of the collection of what had all the time been a legal liability for the taxes. 1958-59 Op. Att'y Gen. p. 360.

Suspension order in effect until adjournment of legislature. — An executive order or suspension is terminated by operation of law upon the failure or refusal of the General Assembly to ratify it at its next meeting after the date of the issuance of the executive order; since the General Assembly might ratify the order by proper legislation at any time prior to its adjournment, it must be considered that the order remained in effect until the final adjournment. 1952-53 Op. Att'y Gen. p. 244.

Revocation of suspension order by succeeding Governor. — When the collection of taxes is suspended by the Governor's executive order under O.C.G.A. § 45-12-22, and prior to submission of the matter to the next General Assembly a succeeding Governor revokes such executive order, the taxes which would otherwise have been due and collectible during the period of such executive order thereupon become due and payable. 1958-59 Op. Att'y Gen. p. 360.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, State and Local Taxation, §§ 737, 748, 756, 757.

C.J.S. — 81A C.J.S., States, § 130. 84 C.J.S., Taxation, § 15.

45-12-23. Incapacity of Commissioner of Insurance.

Whenever the Governor receives information, deemed by him to be reliable, that the Commissioner of Insurance, by reason of sickness or other providential cause, is unable to perform the duties of his office, the

Governor shall call a council to be composed of himself, the Secretary of State, and an appointee of the Governor who is not the Attorney General; and, if such council, or a majority thereof, after investigation and examination into the truth of such report, shall, in writing duly signed, find that such officer is incapable of performing the duties of his office, the Governor, in case of incapacity of the Commissioner of Insurance, shall designate the chief clerk or other clerk then serving in the office of the Commissioner of Insurance to perform the duties of the Commissioner of Insurance during his incapacity. The person so designated to perform the duties of the Commissioner of Insurance shall give bond with good security in the penal sum of \$5,000.00, payable, conditioned, and to be approved in the same manner as the bond required by law to be given by the Commissioner of Insurance. The person designated to perform the duties of the Commissioner of Insurance shall not receive any compensation in addition to that he was, or is, receiving as clerk, but any expense incurred in furnishing the bond required by this Code section and Code Section 45-12-24 shall be borne by the state. When the person designated under authority of this Code section and Code Section 45-12-24 shall have given the bond required and said bond has been approved as required, he shall be authorized to do everything, perform every act, and exercise every prerogative or discretion that the Commissioner of Insurance might do, perform, or exercise under existing law in the absence of his incapacity. (Ga. L. 1937, p. 608, § 1; Ga. L. 1986, p. 855, § 23; Ga. L. 1988, p. 426, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Subordinate not authorized to vote where officer not incapacitated. — No subordinate of the Comptroller General is authorized by O.C.G.A. §§ 45-12-23 and 45-12-24 to attend meetings of the State Depository Board and

cast the Comptroller General's vote on matters coming before the board, based upon the simple absence (as opposed to incapacity) of the Comptroller General. 1971 Op. Att'y Gen. No. 71-105.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 5, 6, 8.

C.J.S. — 67 C.J.S., Officers, §§ 118, 120, 81A C.J.S., States, §§ 87, 94, 134.

45-12-24. Proceedings upon cessation of incapacity; payment of salary of officer during period of incapacity.

Whenever it shall be made to appear to the council composed of the Governor, the Secretary of State, and the Attorney General, as provided in this Code section and Code Section 45-12-23 or a majority thereof, that the incapacity of the Commissioner of Insurance has been overcome and removed, a finding in writing to that effect shall be made and filed in the Governor's office; and thereupon the authority of the person designated to act for the Commissioner of Insurance shall come to an end and the Commissioner of Insurance shall assume and perform the duties of his

office. During the period of the incapacity of the Commissioner of Insurance, the salaries due as provided by existing law shall continue to be paid. (Ga. L. 1937, p. 608, § 2; Ga. L. 1986, p. 855, § 24; Ga. L. 1987, p. 3, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Subordinate not authorized to vote where officer not incapacitated. — No subordinate of the Comptroller General is authorized by O.C.G.A. §§ 45-12-23 and 45-12-24 to attend meetings of the State Depository Board and cast the Comptroller General's vote on matters coming before the board, based upon the simple absence (as opposed to incapacity) of the Comptroller General. 1971 Op. Att'y Gen. No. 71-105.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5. **C.J.S.** — 67 C.J.S., Officers, § 114. 81A C.J.S., States, §§ 102, 134.

45-12-25. Books of record to be maintained by Governor.

The Governor shall cause to be kept and preserved in the executive department the following books of record:

- (1) A journal or minute book showing all of his official acts;
- (2) A book of appropriations in which shall be entered a full account of all annual appropriations, setting forth the amounts under their appropriate headings together with the date of his warrant for such appropriation and in whose favor drawn;
- (3) A book giving a statement of the public debt, the dates and numbers of the bonds issued, in whose favor, for what amounts, the date of payment, and the disposition thereof; also, a full and accurate account of all sums set apart as a sinking fund for the redemption of the public debt, particularly setting forth the amount for the several specific purposes, when drawn, and in whose favor drawn;
- (4) A book in which shall be kept copies of the bonds of officers or agents disbursing public funds; also, a schedule of bonds and other evidences of debt due the state and the disposition thereof;
- (5) A book showing the exact condition of the educational fund of the state and the annual income thereof;
- (6) A book or books containing a list of the respective numbers, districts, sections, and counties of the several lots of land disposed of by the several land lotteries, the names of the drawers of each, to whom and when granted, and a similar schedule of all lands sold by the state, by whom purchased, and to whom and when granted;

(7) A book which is an index or key to all the documents appertaining to his office, which documents he has carefully filed away, properly marked or numbered; and

(8) Any other books or files that, in his judgment, the executive department needs. (Orig. Code 1863, § 78; Code 1868, § 72; Code 1873, § 77; Code 1882, § 77; Civil Code 1895, § 141; Civil Code 1910, § 164; Code 1933, § 40-208; Ga. L. 1945, p. 402, § 1; Ga. L. 1990, p. 8, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Funds appropriated to the Executive Department may be used to publish the official addresses, messages, and state papers of the Governor. 1945-47 Op. Att'y Gen. p. 299.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 130.

45-12-26. Defense of action in which state has interest.

Unless otherwise specially provided for, the Governor, in his discretion, shall provide for the defense of any action instituted against the state or any action instituted against any person, the result of which is of interest to the state because of any claim inconsistent with the state's sovereignty, jurisdiction, or rights. (Orig. Code 1863, § 24; Code 1868, § 22; Code 1873, § 22; Code 1882, § 22; Civil Code 1895, § 23; Civil Code 1910, § 23; Code 1933, § 40-209.)

Cross references. — Power of Governor to direct Department of Law to institute and prosecute matters, proceedings, and litigations in name of state, § 45-15-35.

JUDICIAL DECISIONS

Action not suit against the state. — A suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the state. *Georgia R.R. & Banking Co. v. Redwine*, 342 U.S. 299, 72 S. Ct. 321, 96 L. Ed. 335 (1952).

Restrictions placed on courts. — Where the General Assembly authorizes suit to be brought against the state, on certain stipulations, the stipulations are restrictions on the courts and may not be exceeded. *Thweatt v. State*, 66 Ga. 673 (1881).

Consent of Governor necessary. — The state, by the Governor, cannot be made a party claimant, without the Governor's consent. *Parker v. Hughes*, 25 Ga. 374 (1858); *Printup v. Cherokee R.R.*, 45 Ga. 365 (1872).

The Governor is neither a proper nor necessary party to an injunction filed against sheriff when execution was issued by the Governor and levied by the sheriff. A demurrer (now motion to dismiss) filed for the sheriff by the Attorney General in official capacity is a sufficient representation of the Governor. *Mayo v. Renfro*, 66 Ga. 408 (1881); *Simpson & Ledbetter v. Mathis*, 74 Ga. 115 (1884).

Cited in *Western Union Tel. Co. v. Western & A.R.R.*, 142 Ga. 532, 83 S.E. 135 (1914); *Florida State Hosp. for Insane v. Durham Iron Co.*, 192 Ga. 459, 15 S.E.2d 509 (1941).

OPINIONS OF THE ATTORNEY GENERAL

Reimbursement of litigation expenses. — The Governor may reimburse the expenses incurred by the State and County Democratic Executive Committee in connection with the defense of a proceeding involving

the primary election laws where the court holds that the primary election is an integral part of the electoral process of the state. 1945-47 Op. Att'y Gen. p. 297.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 9. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 83, 90, 91.

C.J.S. — 81A C.J.S., States, §§ 130, 297-313.

45-12-27. Calling out militia to execute laws.

It shall be the duty of the Governor to see that the laws of this state are executed. For this purpose he shall have the power, as commander in chief, to call out the state militia whenever, in his discretion, the due enforcement of the process of the courts shall be so resisted and defied as to require such intervention. (Orig. Code 1863, § 58; Code 1868, § 54; Code 1873, § 51; Code 1882, § 51; Civil Code 1895, § 118; Civil Code 1910, § 141; Code 1933, § 40-201.)

Cross references. — Status of Governor as commander-in-chief of militia, Ga. Const. 1983, Art. V, Sec. II, Para. III.

JUDICIAL DECISIONS

Duty as to process. — Under O.C.G.A. § 45-12-27, the duty of the Governor in the last resort is to enforce the process of the courts. The Governor is the executive of the process of the courts, as well as for the

enforcement of all law generally. The idea of making the Governor a party defendant without consent is inconsistent with this duty. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10.

C.J.S. — 6 C.J.S., Armed Services, § 288 et seq. 77 C.J.S., Riot ; Insurrection, § 28.

45-12-28. Calling out militia for defense of state in case of invasion or insurrection.

In case of invasion or insurrection, the Governor may call out the state militia for the defense of the state until such time as the General Assembly shall meet; and, when he takes such action, he shall have power to make all necessary provision for their transportation, accommodation, equipment, and support. (Orig. Code 1863, § 59; Code 1868, § 55; Code 1873, § 52; Code 1882, § 52; Civil Code 1895, § 119; Civil Code 1910, § 142; Code 1933, § 40-202.)

Cross references. — Further provisions regarding authority of Governor to call out militia, § 38-2-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10.

C.J.S. — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

45-12-29. Powers to prevent violence and maintain order — General authority.

The Governor is authorized to perform any action which, in his discretion, is necessary to prevent overt threats of violence or acts of violence to the personal property of citizens of the state and to maintain peace, tranquility, and good order in the state or in any area or political subdivision thereof. (Ga. L. 1957, p. 44, § 1.)

Cross references. — Authority of Governor to declare extreme forest fire emergency, § 12-6-89. Emergency orders pertaining to dangers to public health, safety, etc., in connection with solid waste handling activities, § 12-8-31. Emergencies involving imminent and substantial danger to environment or public health as result of hazardous waste management, § 12-8-75. Emergency situations involving air pollution, § 12-9-14.

Power of Governor to close schools or institutions under control of board of regents, § 20-3-70. Governor's power to postpone or extend qualifying periods for election during state of emergency, § 21-2-50.1. Power of Governor to appoint special policemen for protection of property, Ch. 9, T. 35. Further provisions regarding emergency powers of Governor, §§ 38-2-6, 38-3-22, 38-3-51.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32.

C.J.S. — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

ALR. — Governmental powers in peacetime emergency, 88 ALR 1519; 96 ALR 312; 96 ALR 826.

45-12-30. Powers to prevent violence and maintain order — Proclamation of emergency; issuance of orders to individuals or groups; enforcement of orders.

When, in his opinion, the facts warrant, the Governor shall, by proclamation, declare that, because of unlawful assemblage, violence, overt threats of violence, or otherwise, a danger exists to the person or property of any citizen or citizens of the state and that the peace and tranquility of the state or of any area or political subdivision thereof is threatened, and because thereof an emergency, with reference to said threats and danger, exists. In all such cases, when the Governor shall issue his proclamation he shall be and is further authorized, in coping with said threats and danger, to order and direct any person, corporation, association, or group of

persons to do any act which would, in his opinion, prevent danger to life, limb, or property or prevent a breach of the peace; or he may order such person, corporation, association, or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb, or property or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of society; and he shall have full power to enforce such order or proclamation by appropriate means. (Ga. L. 1957, p. 44, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor; §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32.

C.J.S. — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

ALR. — Governmental powers in peace-time emergency, 88 ALR 1519; 96 ALR 312; 96 ALR 826.

Conclusiveness of official determination of existence of emergency within the contemplation of constitutional or statutory provisions permitting excess of maximum limit of tax or indebtedness in an “emergency”, 90 ALR 328.

45-12-31. Powers to prevent violence and maintain order — Filing of proclamation; powers of Governor over civil and military officials generally.

Upon the issuance of a proclamation as provided for in Code Section 45-12-30, the Governor shall immediately file the same in the office of the Secretary of State for recording. The proclamation shall be effective upon issuance and shall remain in full force and effect until revoked by the Governor; and he is authorized to take and exercise any or all of the following actions, powers, and prerogatives:

(1) Call out the military forces of the state (state militia) and order and direct said forces to take such action as in his judgment may be necessary to avert the threatened danger and to maintain peace and good order in the particular circumstances;

(2) Order any sheriff or sheriffs of this state to exercise fully the powers granted them (suppress tumults, riots, and unlawful assemblies in their counties with force and strength when necessary) and to do all things necessary to maintain peace and good order;

(3) Order and direct the Department of Public Safety and each and every officer thereof to do and perform such acts and services as he may direct and as in his judgment may be necessary to maintain peace and good order in the circumstances;

(4) Authorize, order, or direct any state, county, or city official to enforce such proclamation by injunction, mandamus, or other appropriate legal action in any and all courts of the state. (Ga. L. 1957, p. 44, § 6.)

Cross references. — Further provisions regarding authority of Governor to call out militia, § 38-2-6.

OPINIONS OF THE ATTORNEY GENERAL

National Guard is eligible to share in respect to statutorily authorized activities.
proceeds of drug-related forfeitures with 1995 Op. Att'y Gen. No. 95-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32. **C.J.S.** — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

45-12-32. Powers to prevent violence and maintain order — Promulgation and enforcement of emergency rules and regulations.

The Governor is authorized to promulgate and enforce such emergency rules and regulations as are necessary to prevent, control, or quell violence, threatened or actual, during any emergency lawfully declared by him to exist. In order to protect the public welfare, to protect the persons and property of citizens against violence, to prevent damage to public property, and to maintain peace, tranquility, and good order in the state, such rules and regulations may control public parks, public buildings, public utilities, or any other public facility in Georgia and shall regulate the manner of use, the time of use, and the persons using the facility during any emergency. Such rules and regulations shall have the force and effect of law during any emergency and shall remain in effect during a period of time and in such manner and shall affect such persons, public buildings, public utilities, and public facilities as in the judgment of the Governor shall best provide a safeguard for protection of persons and property where danger and violence exist or are threatened among the citizens of Georgia. (Ga. L. 1957, p. 44, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32. **C.J.S.** — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

45-12-33. Powers to prevent violence and maintain order — Publishing and posting of emergency rules and regulations.

Whenever the Governor shall promulgate emergency rules and regulations, such rules and regulations shall be published and posted during the emergency in the area affected; and copies of the rules shall be filed with the Secretary of State and shall be a part of the public record. (Ga. L. 1957, p. 44, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32. **C.J.S.** — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

45-12-34. Powers to prevent violence and maintain order — Calling upon military or law enforcement agencies for enforcement of rules and regulations.

The Governor shall have emergency power to call upon the military forces of the state or any other state or county law enforcement agency to enforce the rules and regulations authorized by Code Sections 45-12-29 through 45-12-33. (Ga. L. 1957, p. 44, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 10. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 3, 32. **C.J.S.** — 77 C.J.S., Riot; Insurrection, § 28. 81A C.J.S., States, § 130.

45-12-35. Reward for detection or apprehension of perpetrators of felonies or cattle, horse, or swine thieves.

(a) For the purposes of this Code section, the term “conviction” means a final judgment of conviction entered upon a verdict of guilty or upon a plea of guilty. Such judgment shall be deemed to be a final judgment when the remittitur from the appellate court of this state affirming the conviction is filed in the court below or, if the proceeding is before a federal court, when the United States Circuit Court of Appeals has affirmed the conviction.

(b) The Governor and any county or municipal governing authority shall, in their discretion, offer and cause to be paid rewards for the detection or apprehension of the perpetrator of any felony committed within this state, such reward not to exceed the sum of \$1,000.00 in felonies not capital, including arson, and not to exceed the sum of \$10,000.00 in capital felonies and arson; provided, however, that the governing authority of a county or municipality may offer and pay such a reward only in cases in which the Governor has first offered a reward and, in such cases, the amount offered by any local governing authority shall not exceed \$25,000.00.

(c) The Governor shall, at the Governor’s discretion, offer and cause to be paid rewards for the detection or apprehension of cattle, horse, ratites, or swine thieves stealing cattle, horses, ratites, or swine within this state; and such reward shall not exceed \$1,000.00.

(d) The Governor, at his discretion, may pay any reward authorized by this Code section after conviction.

(e) No reward provided for in this Code section shall be paid to any officer who arrests such person in the regular discharge of his or her duty by virtue of process in his or her hands to be executed nor to any person who has arrested the offender prior to the publication of the reward. (Orig. Code 1863, § 65; Code 1868, § 61; Ga. L. 1872, p. 11, § 1; Code 1873, § 58; Ga. L. 1875, p. 104, § 1; Ga. L. 1878-79, p. 165, § 1; Code 1882, § 58; Penal Code 1895, § 881; Penal Code 1910, § 902; Code 1933, § 27-101; Ga. L. 1962, p. 693, § 1; Ga. L. 1966, p. 278, § 1; Ga. L. 1978, p. 2033, § 1; Ga. L. 1979, p. 1173, § 1; Ga. L. 1989, p. 290, § 1; Ga. L. 1995, p. 244, § 32; Ga. L. 1997, p. 581, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, in subsection (b), inserted “or her” in two places and revised punctuation.

Cross references. — Reward for information leading to capture of escaped inmate, § 42-1-2.

JUDICIAL DECISIONS

Municipal corporations have no power to offer rewards under O.C.G.A. § 45-12-35.

Barrett v. City of Atlanta, 145 Ga. 678, 89 S.E. 781 (1916).

OPINIONS OF THE ATTORNEY GENERAL

The primary purpose of offering a reward is to cause the apprehension and punishment, according to law, of the person who

commits a crime. 1950-51 Op. Att’y Gen. p. 301.

RESEARCH REFERENCES

Am. Jur. 2d. — 67 Am. Jur. 2d, Criminal Law, §§ 1, 3-12, 19-23.

C.J.S. — 77 C.J.S., Rewards and Bounties, § 1 et seq., § 22 et seq., § 36 et seq.

ALR. — Construction of statute authorizing public authorities to offer rewards for arrest and conviction of persons guilty of crime, 86 ALR 579.

Right to reward of furnisher of information leading to arrest and conviction of offenders, 100 ALR2d 573.

Knowledge of reward as condition of right thereto, 86 ALR3d 1142.

45-12-36. Reward for information leading to identification, apprehension, and conviction of persons who murder law enforcement officer.

(a) For the purposes of this Code section, “conviction” means a final judgment of conviction entered upon a verdict of guilty or upon a plea of guilty. Such judgment shall be deemed to be a final judgment when the remittitur from the appellate court of this state affirming the conviction is filed in the court below or, if the proceeding is before a federal court, when the United States Circuit Court of Appeals has affirmed the conviction.

(b) Any person, except a person who shall be charged with the power, duty, and responsibility of enforcing the criminal laws of this state, who

furnishes the necessary information which leads to the identification, apprehension, and conviction of a person who has committed the crime of murder or voluntary manslaughter, where the victim of such crime was a law enforcement officer acting in the line of duty at the time of the commission of such crime, may be entitled to receive a reward in an amount up to \$10,000.00. No reward offered under this Code section shall be awarded unless the information furnished possesses such unique qualities that without the divulgence thereof by the person claiming the reward, the identity of the perpetrator of such crime and the evidence leading to his conviction would not have been readily ascertainable from other sources during the ordinary course of a routine investigation of the crime. In those instances where, in the judgment of the Governor, one or more persons should be entitled to the reward, the Governor shall direct the division of the reward among those entitled thereto at his discretion or he may rely upon the advice of the district attorney or other official prosecuting the case as to the appropriate division of the reward.

(c) The Governor, at his discretion, may pay any reward authorized by this Code section after conviction.

(d) The Governor may pay such reward to any such person from funds appropriated to the executive branch of the state government for such purpose. (Code 1933, § 27-101.1, enacted by Ga. L. 1970, p. 447, § 1; Ga. L. 1979, p. 1173, § 2.)

Cross references. — Reward for information leading to capture of escaped inmate, § 42-1-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 67 Am. Jur. 2d, Rewards, § 12.

C.J.S. — 77 C.J.S., Rewards and Bounties, § 1 et seq., § 22 et seq., § 36 et seq.

ALR. — Construction of statute authorizing public authorities to offer rewards for arrest and conviction of persons guilty of crime, 86 ALR 579.

Right to reward of furnisher of information leading to arrest and conviction of offenders, 100 ALR2d 573.

Knowledge of reward as condition of right thereto, 86 ALR3d 1142.

45-12-37. Reward for information leading to arrest and conviction of person selling dangerous or narcotic drugs generally; offering of rewards by counties and municipalities.

(a) For the purposes of this Code section, “conviction” means a final judgment of conviction entered upon a verdict of guilty or upon a plea of guilty. Such judgment shall be deemed to be a final judgment when the remittitur from the appellate court of this state affirming the conviction is filed in the court below or, if the proceeding is before a federal court, when the United States Circuit Court of Appeals has affirmed the conviction.

(b) Any person, other than a law enforcement officer, who furnishes information leading to the arrest and conviction of a person who is charged with selling dangerous drugs in violation of Code Section 16-13-72 may receive a reward of up to \$500.00. Any person, other than a law enforcement officer, who furnishes information leading to the arrest and conviction of a person who is charged with selling a controlled substance in violation of Code Section 16-13-30 or 16-13-31, may receive a reward of \$1,000.00.

(c) The Governor, at his discretion, may pay any reward authorized by this Code section after conviction.

(d) The Governor, at his discretion, may pay such reward to any such person from funds appropriated or otherwise available to the executive branch of the state government.

(e) Counties and municipalities wherein the crime was committed are authorized, but not required, to supplement or make rewards to persons entitled to receive a reward, as provided for in subsection (b) of this Code section, in an amount not to exceed \$200.00 paid from county funds and \$200.00 paid from municipal funds for each such person. Any rewards paid pursuant to this subsection shall be paid at the time the conviction becomes final, as provided for in subsection (a) of this Code section, from the funds of any such county or municipality, as the case may be. It is declared that any funds expended pursuant to this subsection are expended for a public purpose.

(f) When more than one person furnishes information which would entitle them to receive the rewards pursuant to subsections (b) through (e) of this Code section, such rewards shall be paid to the first person furnishing such information; and, if more than one person furnishes such information at the same time, such rewards shall be prorated among all persons furnishing such information. (Code 1933, § 27-101.2, enacted by Ga. L. 1970, p. 447, § 1; Ga. L. 1973, p. 725, § 1; Ga. L. 1979, p. 1173, § 3; Ga. L. 1982, p. 3, § 45.)

Cross references. — Reward for information leading to capture of escaped inmate, § 42-1-2.

JUDICIAL DECISIONS

Cited in *Wells v. State*, 126 Ga. App. 130, 190 S.E.2d 106 (1972); *Lord v. State*, 235 Ga. 342, 219 S.E.2d 425 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 67 Am. Jur. 2d, Rewards, § 12.

C.J.S. — 77 C.J.S., Rewards and Bounties, § 1 et seq., § 22 et seq., 36 et seq.

ALR. — Construction of statute authorizing public authorities to offer rewards for arrest and conviction of persons guilty of crime, 86 ALR 579.

Right to reward of furnisher of informa-

tion leading to arrest and conviction of offenders, 100 ALR2d 573.

Knowledge of reward as condition of right thereto, 86 ALR3d 1142.

45-12-38. Temporary transfer of institution between departments or agencies authorized; special report to General Assembly; temporary transfer to become permanent absent legislative disapproval.

(a) At any time during the interim period between regular sessions of the General Assembly, the Governor may make a temporary transfer of any penal, correctional, educational, or eleemosynary institution of this state from one department or agency of state government to another when in his opinion the public interest so demands, except that no such temporary transfer shall be made to or from the Board of Regents of the University System of Georgia.

(b) Whenever a temporary transfer of a state institution is made by the Governor under this Code section, he shall submit to the next regular session of the General Assembly a special report detailing said transfer and stating the reasons therefor.

(c) Any temporary transfer of a state institution by the Governor pursuant to this Code section shall become permanent upon the expiration of the next regular session of the General Assembly following this transfer unless during that session a resolution disapproving said transfer shall have been adopted by both houses. (Ga. L. 1960, p. 891, §§ 1-3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4. 60 Am. Jur. 2d, Penal and Correctional Institutions, § 3.

C.J.S. — 72 C.J.S., Prisons, § 3. 81A C.J.S., States, § 130.

45-12-39. Annual report to General Assembly on administration's policies and goals.

(a) On or before the fifth day of each regular session of the General Assembly, it shall be the duty of the Governor to furnish a written report to each member of the General Assembly stating his administration's policies and goals on the following subjects:

- (1) Intellectual development;
- (2) Human development;
- (3) Transportation and communications;
- (4) Economic development;
- (5) Protection of persons and property;

(6) Natural environment; and

(7) General government.

(b) The reports required of the Governor by subsection (a) of this Code section may include any subjects in addition to those required by said subsection. Such reports may be in such form as the Governor shall determine; and the Governor, at his discretion, may elect not to issue the report during the last year of his term of office. (Ga. L. 1974, p. 478, § 1; Ga. L. 1976, p. 1194, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4. C.J.S. — 81A C.J.S., States, § 130.

45-12-40. Cooperation with other states on federal grants.

For the purpose of establishing and administering federal grant programs administered by the State of Georgia, the Governor or his designee is authorized to cooperate with or enter into agreements with any official of another state. The Governor or his designee is authorized to enter into contracts and perform all things necessary in his discretion to secure to this state and citizens of this state the benefits of federal grant programs. (Code 1981, § 45-12-40, enacted by Ga. L. 1986, p. 178, § 1.)

ARTICLE 3

APPOINTMENTS AND VACANCIES

45-12-50. Duty to appoint officers and fill vacancies.

The Governor shall appoint all officers and fill all vacancies unless otherwise prescribed by the Constitution and laws of this state. All appointments to discharge a public duty by the General Assembly, or by the Governor under its authority, are offices within the meaning of the Constitution of Georgia. (Orig. Code 1863, § 72; Code 1868, § 66; Code 1873, § 69; Code 1882, § 69; Civil Code 1895, § 132; Civil Code 1910, § 155; Code 1933, § 40-301.)

Cross references. — Power of Governor to fill vacancies in office, Ga. Const. 1983, Art. V, Sec. II, Para. VIII. Call by Governor of special election to fill vacancy created by recall election, § 21-4-13. Authority of Governor to appoint qualified persons to state examining boards notwithstanding laws requiring appointment of nominees of private organizations or associations to such boards,

§ 43-1-14. Vacating of public offices, Ch. 5, T. 45.

Law reviews. — For article discussing control of tenure of executive officers by the president and the Governor, see 3 Ga. B.J. 13 (1941). For article discussing appointment and removal power of Governor, see 14 Ga. B.J. 171 (1951).

For comment on *Rogers v. Medical Ass'n*,

244 Ga. 151, 259 S.E.2d 85 (1979), invalidating Georgia statute requiring Governor's appointments to Composite State Board of Medical Examiners be made solely from

nominees submitted by state medical society as an unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

JUDICIAL DECISIONS

Authority to fill vacancies. — When the Constitution creates an office to be filled by appointment of the Governor, it is immaterial whether the office has “become vacant”; it is sufficient that a vacancy exists since in the former case the Governor may fill it, under the express words of the Constitution, and in the latter case, the Governor may fill it under O.C.G.A. § 45-12-50, which authorizes the Governor to appoint all officers and fill all vacancies, when no other mode is provided by the Constitution and laws. *Gormley v. Taylor*, 44 Ga. 76 (1871).

Filling vacancy in term not included. —

While by Ga. Const. 1976, Art. V, Sec. II, Para. IV (see Ga. Const., 1983, Art. V, Sec. II, Para. VIII) and by O.C.G.A. § 45-12-50, the Governor is required to fill vacancies in office by appointment, this requirement does not extend to or embrace filling a vacancy in term, but has reference solely to filling a vacancy in office. *Roan v. Rodgers*, 201 Ga. 696, 40 S.E.2d 551 (1946).

Cited in *Russell v. Cooley*, 69 Ga. 215 (1882); *Kaigler v. Floyd*, 187 Ga. 441, 200 S.E. 784 (1939); *Britton v. Bowden*, 188 Ga. 806, 5 S.E.2d 47 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5 et seq.

C.J.S. — 67 C.J.S., Officers, §§ 36, 40. 81A C.J.S., States, §§ 84, 87, 130.

ALR. — Reconsideration of appointment, or confirmation of appointment, to office, 89 ALR 132.

45-12-51. General power to engage services of any person.

The Governor shall have the power to engage the services of any competent person for the discharge of any duty required by the laws and essential to the interests of the state or necessary, in an emergency, to preserve the property or funds of the state. (Orig. Code 1863, § 75; Code 1868, § 69; Code 1873, § 74; Code 1882, § 74; Civil Code 1895, § 136; Civil Code 1910, § 159; Code 1933, § 40-305.)

JUDICIAL DECISIONS

Cited in *Daniel v. Citizens & S. Nat'l Bank*, 182 Ga. 384, 185 S.E. 696 (1936).

OPINIONS OF THE ATTORNEY GENERAL

The Governor may employ a financial advisor on matters pertaining to federal grants, priorities, allotments, etc., to the state. 1945-47 Op. Att'y Gen. p. 300.

The Governor had authority to create the State Crime Commission as an advisory body with no substantive state powers, to secure

federal assistance for criminal justice planning functions, and to employ a staff for the commission from appropriations made available for that purpose; since the commission does not exercise executive, legislative, or judicial powers of the state, Ga. Const. 1983, Art. I, Sec. II, Para. III does not prohibit the

combination of judicial, legislative, or executive officers in its composition. 1975 Op. Att'y Gen. No. 75-142.

Authority to pay agent's expenses. — Under the provisions of O.C.G.A. §§ 17-13-42 and 45-12-51 the Governor is required to appoint a person to act as an agent of the State of Georgia to receive a fugitive from

justice from this state and return the fugitive to the authorities of the county from which the person is a fugitive; when the Governor acts under these statutory provisions, it necessarily follows that the Governor is authorized to pay the expenses, such as lodging at hotel and meals. 1952-53 Op. Att'y Gen. p. 97.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5.

C.J.S. — 67 C.J.S., Officers, § 36. 81A C.J.S., States, § 86.

ALR. — Validity, under state law, of ap-

pointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor, 84 ALR3d 29.

45-12-52. Filling of vacancies where advice and consent of Senate required; incumbent officer not to hold over beyond term; interim appointment.

(a) In case of a vacancy from any cause in any office, the full term of which, by the Constitution of Georgia, is to be filled by the Governor with the advice and consent of the Senate, the Governor shall appoint and commission some qualified person to fill the vacancy until the next meeting of the General Assembly, when said vacancy shall be filled in the manner described in the Constitution of Georgia for filling the full term of such office. All existing vacancies and all vacancies which may occur during the session of the General Assembly shall be filled pursuant to this Code section.

(b) Where it shall be incumbent upon the Governor to appoint a public officer subject to confirmation of or by and with the advice and consent of the Senate, the office shall be deemed vacant at the expiration of the term of such officer, and he shall not hold over until his successor shall have been appointed and confirmed. The Governor may make an appointment to fill such vacancy ad interim; and the appointee shall hold office until the Senate shall next convene, at which time the Governor shall submit an appointment to fill such vacancy to the Senate for confirmation. The appointee, if confirmed, shall hold over until the expiration of the term for which he was appointed; provided, however, that the Governor shall not appoint ad interim any person previously rejected by the Senate. Whenever the Senate is in session, the Governor shall submit the names of appointees to fill all vacancies which will occur within eight months after the date fixed for the convening of the Senate. (Ga. L. 1871-72, p. 284, § 1; Code 1873, § 70; Code 1882, § 70; Civil Code 1895, § 133; Civil Code 1910, § 156; Ga. L. 1931, p. 7, § 116; Code 1933, § 40-302.)

Cross references. — Power of Governor to fill vacancies in office, Ga. Const. 1983, Art. V, Sec. II, Para. VIII. Public officers holding over, § 45-2-4.

JUDICIAL DECISIONS

Construction of terms. — In O.C.G.A. § 45-12-52, the language, “until the Senate shall next convene,” should be construed as including the next session of the Senate until such time as an appointment is confirmed during the session. *Stanley v. Sims*, 185 Ga. 518, 195 S.E. 439 (1937).

This general law was by implication written into special laws creating the office of solicitor of the City Court of Athens and

became a part thereof and thus provided machinery for election of said solicitor. *Upson v. Almand*, 190 Ga. 376, 9 S.E.2d 662 (1940).

Cited in *Kaigler v. Floyd*, 187 Ga. 441, 200 S.E. 784 (1939); *Britton v. Bowden*, 188 Ga. 806, 5 S.E.2d 47 (1939); *Butts v. Curtis Publishing Co.*, 242 F. Supp. 390 (N.D. Ga. 1964).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-12-54 has not repealed or superseded O.C.G.A. § 45-12-52, and the two statutes should be construed, where possible, so as to make both stand and give effect to each. 1960-61 Op. Att’y Gen. p. 452.

Terms defined. — O.C.G.A. § 45-12-52 uses the word “vacancy” in a sense different from its ordinary legal meaning in that as used therein it includes situations where a term of office simply expires in the ordinary manner. 1960-61 Op. Att’y Gen. p. 452.

The fact each General Assembly meets in two annual sessions does not require that all appointments be submitted to the Senate at the first session following the election and organization thereof, as O.C.G.A. § 45-12-52 says that such appointments can be submitted to the Senate “whenever in session.” 1960-61 Op. Att’y Gen. p. 452.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5 et seq.

C.J.S. — 67 C.J.S., Officers, § 35. 81A C.J.S., States, §§ 87, 130.

ALR. — Reconsideration of appointment, or confirmation of appointment, to office, 89 ALR 132.

45-12-53. Appointments not subject to Senate confirmation unless otherwise required.

No appointment by the Governor shall be subject to confirmation by the Senate unless the statute under which such appointment is made requires confirmation or confirmation is otherwise required by law. (Ga. L. 1941, p. 289, § 2.)

Law reviews. — For article discussing control of tenure of executive officers by the

president and the Governor, see Ga. B.J. 13 (1941).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, §§ 4, 5.

C.J.S. — 67 C.J.S., Officers, §§ 36, 40. 81A C.J.S., States, § 84.

45-12-54. Appointments to boards, commissions, and bureaus subject to Senate confirmation.

All appointments made by the Governor to boards, commissions, and bureaus created and established by the laws of this state shall be made subject to confirmation by the Senate. It shall be the duty of the Governor to submit to the Senate the names of all such appointees appointed prior to the convening of the General Assembly or during the session, either regular or special, of the General Assembly. Unless such appointees are confirmed by the Senate, they shall cease to hold the office to which they have been appointed, and the name of another appointee to fill such office shall be immediately submitted by the Governor to the Senate. (Ga. L. 1943, p. 208, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-12-54 has not repealed nor superseded O.C.G.A. § 45-12-52, and the two statutes should be construed, where possible, so as to make both stand and give effect to each. 1960-61 Op. Att'y Gen. p. 452.

O.C.G.A. § 45-12-54 only applies to appointments to boards, commissions and bureaus created by the General Assembly; where the Constitution has provided the method of filling offices, the legislature may

not provide for filling them in any other manner than that directed by the Constitution. 1945-47 Op. Att'y Gen. p. 64.

Failure to confirm appointment. — A person appointed by the Governor to the Georgia State Board of Dental Examiners ceases to hold office when the next session of the General Assembly adjourns sine die without the Senate having confirmed the appointment. 1945-47 Op. Att'y Gen. p. 489.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 98.

C.J.S. — 67 C.J.S., Officers, §§ 40, 41. 81A C.J.S., States, § 84.

ALR. — Reconsideration of appointment, or confirmation of appointment, to office, 89 ALR 132.

45-12-55. Governor authorized to appoint attorneys as executive counsel; compensation.

The Governor shall be authorized to appoint attorneys to serve as his or her executive counsel for such periods of time as he or she deems advisable. The salaries, expenses, and all other remunerations of the attorneys appointed by the Governor as his or her executive counsel shall be determined by the Governor and paid from funds appropriated to or otherwise made available to the office of the Governor. (Ga. L. 1967, p. 102, § 3; Ga. L. 1975, p. 879, § 2; Ga. L. 1999, p. 797, § 1.)

JUDICIAL DECISIONS

Cited in *Lively v. Fulcher*, 244 Ga. 771, 262 S.E.2d 93 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 10, 11, 18 et seq.

C.J.S. — 7A C.J.S., Attorney General, §§ 3, 6.

45-12-56. Appointment of secretaries and clerical personnel; payment of salaries.

The Governor shall have power to appoint his own secretaries and to provide such other clerical personnel as may be required in his office. The salaries and compensation of secretaries and clerical personnel so appointed shall be paid from funds appropriated for such purposes. (Code 1882, § 5119; Civil Code 1895, § 5822; Civil Code 1910, § 6488; Code 1933, § 40-304; Ga. L. 1973, p. 665, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Employment of staff for advisory commission. — The Governor had authority to create the State Crime Commission as an advisory body with no substantive state powers, to secure federal assistance for criminal justice planning functions, and to employ a staff for the commission from appropria-

tions made available for that purpose; since the commission does not exercise executive, legislative, or judicial powers of the state, Ga. Const. 1983, Art. I, Sec. II, Para. III does not prohibit the combination of judicial, legislative, or executive officers in its composition. 1975 Op. Att'y Gen. No. 75-142.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5. 63C Am. Jur. 2d, Public Officers and Employees, § 276.

C.J.S. — 67 C.J.S., Officers, §§ 36, 219. 81A C.J.S., States, §§ 84, 104, 130.

45-12-57. Governor's messenger — Authority to appoint; salary.

(a) The Governor, in his discretion, may appoint a messenger for the office of the Governor or may have that duty performed by some other state employee engaged by him under the general authority granted to him.

(b) The salary of a messenger appointed by the Governor shall be \$950.00 per annum. If the duty is performed by some other state employee engaged by the Governor, it shall be done without additional compensation. (Orig. Code 1863, §§ 120, 1572; Code 1868, §§ 115, 1634; Code 1873, §§ 124, 1640; Code 1882, §§ 124, 1640; Civil Code 1895, §§ 144, 282; Civil Code 1910, §§ 167, 317; Code 1933, §§ 40-306, 40-307; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5. 63C Am. Jur. 2d, Public Officers and Employees, § 275.

C.J.S. — 67 C.J.S., Officers, §§ 36, 226. 81A C.J.S., States, §§ 86, 107.

45-12-58. Governor's messenger — Duties.

The messenger shall perform such duties for the office of the Governor and for other state officers and such other service connected with the state business at the capitol as the Governor shall prescribe and he shall be governed by such rules and regulations as the Governor may adopt. (Orig. Code 1863, § 121; Code 1868, § 116; Code 1873, § 125; Code 1882, § 125; Civil Code 1895, § 145; Civil Code 1910, § 168; Code 1933, § 40-308.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230.

C.J.S. — 67 C.J.S., Officers, § 198. 81A C.J.S., States, § 123.

45-12-59. Governor's messenger — Special messenger.

Where there is no messenger or where the duty cannot be performed by the person acting as messenger, the Governor, if necessary, may employ some person, for a reasonable compensation, to perform any service which is the duty of a messenger. (Orig. Code 1863, § 122; Code 1868, § 117; Code 1873, § 126; Code 1882, § 126; Civil Code 1895, § 146; Civil Code 1910, § 169; Code 1933, § 40-309.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 5.

C.J.S. — 67 C.J.S., Officers, § 36. 81A C.J.S., States, §§ 84-86, 130.

45-12-60. Payment of compensation of persons whose compensation not prescribed.

All persons who are employed by the Governor but for whom no compensation is prescribed shall be paid, at his discretion, out of the money appropriated therefor. If no money shall be thus appropriated and the employment shall be indispensable, he shall pay them out of any contingent funds. (Orig. Code 1863, § 1573; Code 1868, § 1635; Code 1873, § 1641; Code 1882, § 1641; Civil Code 1895, § 283; Civil Code 1910, § 318; Code 1933, § 40-312.)

OPINIONS OF THE ATTORNEY GENERAL

Compensation of special agent. — O.C.G.A. § 45-12-60 gives the Governor the right to prescribe compensation for the employment of a special agent, if no compensation has been fixed by law and no appropriation made therefor, and provides that such payment shall be made out of the

contingent funds. 1945-47 Op. Att'y Gen. p. 300.

Fund used to pay expenses. — Reimbursement of the expenses of private citizens serving on the Governor's Committee on Housing in Georgia must be made directly from the operating expenses portion of the

budget of the Executive Department, not the Governor's emergency fund. 1970 Op. Att'y Gen. No. 70-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 276.

C.J.S. — 67 C.J.S., Officers, § 226. 81A C.J.S., States, § 107.

ARTICLE 4

OFFICE OF PLANNING AND BUDGET

Cross references. — Applicability of article to Employment Security Administration Fund, § 34-8-81.

MANAGEMENT OF BUDGETARY AND FINANCIAL AFFAIRS

45-12-70. Short title.

This part shall be known and may be cited as the "Budget Act." (Code 1933, § 40-401, enacted by Ga. L. 1962, p. 17, § 1.)

45-12-71. Definitions.

As used in this part, the term:

(1) "Annual operating budget" means the operating budget for each budget unit which details the appropriations passed by the General Assembly for that budget unit.

(2) "Appropriation" means an authorization by the General Assembly to a budget unit to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure described in this part.

(3) "Appropriation Act" means an Act of the General Assembly which authorizes the expenditure of state money.

(4) "Budget" means the complete financial plan for the fiscal year as proposed in the budget report and modified and adopted by appropriation and revenue Acts.

(5) "Budget allotment" means a process of authorizing the withdrawal of state funds from the treasury based on a determination that the budget allotment request is consistent with an approved work program.

(6) "Budget class" means one of the kinds of expenditures denoting a class of service or commodities purchased or properties acquired as

specified in the classification of expenditures provided for in this part for use in expenditure accounting, in the making of budget estimates, and in the budget reports and budgets.

(7) "Budget estimate" means the statement with accompanying explanations, as provided in this part, in which a budget unit states its financial requirements and requests appropriations.

(8) "Budget message" means the required statement by the Governor to the General Assembly after its convening which gives a summary description of the Governor's proposed financial policies and plans contained in the budget report, together with recommendations for additional revenues, if any.

(9) "Budget report" means the recommendations of the Governor to the General Assembly as to financial plans and expenditures to be authorized, with the accompanying statements and explanations provided for in this part.

(10) "Budget unit" means a department, institution, agency, or other unit of organization for which separate appropriations are made.

(11) "Outcome measure" means quantitative and qualitative indicators by which the performance of a program can be assessed against adopted goals and objectives.

(12) "Strategic planning" means the process through which a preferred future direction and organizational mission are established and periodically updated in light of changing trends and issues and goals, objectives, and strategies are adopted and implemented to guide an organization toward that preferred future direction. (Code 1933, § 40-402, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 2.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

JUDICIAL DECISIONS

Cited in Georgia Ass'n of Educators v. man Resources, 403 F. Supp. 1355 (N.D. Ga. Harris, 403 F. Supp. 961 (N.D. Ga. 1975); 1975).
Briarcliff Haven, Inc. v. Department of Hu-

OPINIONS OF THE ATTORNEY GENERAL

Expenditures not mandated. — An appropriation Act does no more or no less than authorize a maximum amount of funds to be spent for specified objects; it does not mandate such expenditures. 1973 Op. Att'y Gen. No. 73-80.

Power to spend appropriated funds. — The actual power of a public agency to

spend public money for particular activities or purposes must be pursuant to a general law, not an appropriation Act. 1973 Op. Att'y Gen. No. 73-80.

Appropriation by General Assembly to unit of organization. — The term "budget unit" does not depend upon whether the General Assembly appropriates money to a

unit of organization defined only by the General Appropriations Act; a budget unit is a unit of organization to which appropriations may be made separate from an appropriation to any other unit of organization; whether the General Assembly may do so depends upon whether the unit of organization has authority under general law, independent of the authority of any other unit of organization under general law, to spend public funds. 1974 Op. Att'y Gen. No. 74-107.

Motor Vehicle Commission as budget unit. — “Budget unit” as defined in O.C.G.A. § 45-12-71 and as used in O.C.G.A. § 45-12-77 means a state department or agency which has, under general law, an independent existence and thus authority to receive and expend an appropriation; the Motor Vehicle Commission is such an agency. 1974 Op. Att'y Gen. No. 74-107.

45-12-72. Establishment of Office of Planning and Budget; general provisions.

(a) There is established in the office of the Governor the Office of Planning and Budget as a separate budget unit for the purpose of promoting economy and efficiency in the fiscal management of the state government. The Governor shall be ex officio director of the budget.

(b) The Governor, through the Office of Planning and Budget, shall have such supervision of every public department, agency, and institution as shall be necessary to secure uniformity and accuracy of accounts and efficient conduct of its fiscal affairs. He may inquire into the methods of conducting the affairs of any public body; he may prescribe and direct the use of such forms of accounts, records, and reports as may be necessary to further efficiency and an adequate system of records for budget-making purposes; and he may prescribe and direct the use of standards of efficiency for public employees, including the establishment of working hours.

(c) The administrative head of the Office of Planning and Budget is the director of the Office of Planning and Budget, who shall be appointed by the Governor to serve at the Governor's pleasure. The director shall be responsible for management of the office and shall exercise supervision and control over the office. The director of the Office of Planning and Budget is authorized to employ such other professional, technical, and clerical personnel as the director may deem necessary to carry out the duties prescribed in this part. Except as otherwise provided in this subsection, the employees of the Office of Planning and Budget shall be governed by the rules and regulations of the State Personnel Board, under Article 1 of Chapter 20 of this title. The Office of Planning and Budget shall pay its pro rata share of the administrative cost of operating the State Merit System of Personnel Administration, in the manner prescribed in Article 1 of Chapter 20 of this title. All employees in the position classification policy coordinator shall be in the unclassified service of the state merit system. Any and all salary increases for such employees shall be based, in part, on each individual employee's job performance as measured by a standard operative appraisal system and, in part, on general increases given to all state

employees. The Governor is authorized to delegate to the director of the Office of Planning and Budget such powers, duties, and authority under this part as the Governor deems advisable; and the Governor shall have the right to retract any such delegation at any time.

(d) The Attorney General, the director of the Office of Treasury and Fiscal Services, the Comptroller General, the state revenue commissioner, and the state auditor shall render such advice and assistance and furnish such information to the Office of Planning and Budget as may be requested and needed. (Code 1933, § 40-403, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1963, p. 427, § 1; Ga. L. 1972, p. 1015, §§ 202, 206; Ga. L. 1993, p. 1399, § 1; Ga. L. 1993, p. 1402, § 18.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "State" was inserted preceding "Merit System of Personnel Administration" in the fifth sentence in subsection (c).

JUDICIAL DECISIONS

Cited in *Maddox v. Fortson*, 226 Ga. 71, 172 S.E.2d 595 (1970).

OPINIONS OF THE ATTORNEY GENERAL

Use of billeting funds or armory rentals by DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the state auditor and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 50. 81A C.J.S., States, § 133.

45-12-73. Powers and duties generally.

The Office of Planning and Budget, at the direction and under the control of the Governor and subject to this part, shall perform the following functions:

- (1) Develop and implement a process of strategic planning to establish and periodically update an overall plan for state government and require all state agencies to develop a strategic plan that is consistent with that overall state plan. The Office of Planning and Budget may assist departments, boards, bureaus, commissions, institutions, authorities, and other agencies in developing those plans and in tailoring them to those organizations' program needs;

(2) Develop and implement an outcome based budgeting system that relates funding to achievement of established goals and objectives, measures agency performance against attainment of planned outcomes, and provides for program evaluations for policy and funding determinations. Program evaluations may include cost benefit analyses, decision analyses, statistical analyses, comparisons with similar programs in other jurisdictions, relevant historical trends, and demographic factors and other useful techniques;

(3) Develop financial policies and plans as the basis for budget recommendations to the General Assembly and prepare detailed documents in accordance with such financial policies and plans for presentation to the General Assembly. The Office of Planning and Budget shall make its records and information available at all times to the General Assembly and its designees;

(4) Coordinate the fiscal affairs and procedures of the state to assure the carrying out of the financial plans and policies approved by the General Assembly, including the administration of a system of annual operating budgets and amendments thereto and of expenditure control;

(5) Develop plans for improvements and economies in organization and operation of the state agencies and implement such plans as are approved by the General Assembly;

(6) Develop a long-term capital improvements budget which emphasizes decentralization of state government and which is consistent with the overall strategic plan for consideration by the General Assembly;

(7) Analyze financial and administrative aspects of proposed legislation;

(8) Provide such assistance as the General Assembly may request and be available to assist its appropriations committees with any needed information or material;

(9) Perform all other duties provided for in this part and such other duties as the General Assembly may from time to time prescribe;

(10) In an effort to improve responsiveness of government and the effective and efficient delivery of services, provide leadership in initiating, organizing, and operating partnerships and collaborations among public and private entities having common or overlapping missions, purposes, roles, responsibilities, clients, or other similar relationships; and

(11) Consult with the General Assembly on a regular basis concerning the development and implementation of the strategic planning process, the development of outcome measures for program evaluation, and the implementation of the other provisions of this article. (Code 1933,

§ 40-404, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 3; Ga. L. 1994, p. 1865, § 1.)

Cross references. — Powers and duties of director of office of Planning and Budget with regard to provision of energy conservation assistance to residential customers by electric and gas utilities, Ch. 4A, T. 46.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, in the second sentence in paragraph (2), “factors” was substituted for “factors,” and a semicolon was substituted for a period at the end.

Editor’s notes. — The State Department of Audits and Accounts and the State Office of Planning and Budget are authorized and directed by Ga. L. 1979, p. 1365 (Senate Resolution No. 101; see § 45-7-28.1) to de-

velop, issue, review and revise rules and regulations governing reimbursement of travel expenses of employees of state agencies, boards and commissions.

The State Department of Audits and Accounts is further authorized and directed to include in its annual audit of the financial accounts of state agencies, boards, and commissions any audit exception to the rules and regulations.

Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Budget Accountability and Planning Act of 1993.’”

OPINIONS OF THE ATTORNEY GENERAL

Promulgation of rules and regulations. — Although both the Office of Planning and Budget and the Department of Administrative Services have the authority to promulgate rules and regulations, they can only do so via the narrowly defined limitations imposed by the General Assembly, for to do otherwise would be an improper delegation of legislative authority. 1972 Op. Att’y Gen. No. 72-73.

Use of billeting funds or armory rentals by

DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the state auditor and the State Depository Board. 1993 Op. Att’y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 50. 81A C.J.S., States, § 133.

45-12-74. Budget report — Preparation and submission to General Assembly.

The Governor, through the Office of Planning and Budget, shall prepare and submit a budget report to the General Assembly within five days after its organization for consideration either with or without amendments and modifications by the General Assembly. (Code 1933, § 40-405, enacted by Ga. L. 1962, p. 17, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Estimating receipts from existing revenue sources. — The Governor possesses the ini-

tial responsibility and authority to establish the estimate of treasury receipts from exist-

ing state revenue sources which are anticipated to be collected in the fiscal year which will be used for the purpose of providing appropriations for that fiscal year. 1979 Op. Att'y Gen. No. 79-18.

Proposed new revenue sources. — The Governor, in preparing a revenue estimate, can delineate proposed new sources of income, a matter contemplated by O.C.G.A. § 45-12-75(2) and (6), so long as the estimate for the proposed new source is separated from the estimate of income from existing sources. Also, the General Assembly

can appropriate up to the estimate of existing and proposed new sources if it first enacts the proposed new revenue measure. This type of action, that is, the adoption of "such revenue and other Acts as are necessary," is a clearly proper method of altering the budget report. These actions are legislative in nature, not executive. 1979 Op. Att'y Gen. No. 79-18.

The contemplated method by which the "amendments and modifications" may be effected is clearly delineated by O.C.G.A. § 45-12-80. 1979 Op. Att'y Gen. No. 79-18.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4.

C.J.S. — 67 C.J.S., Officers, § 198. 81A C.J.S., States, §§ 130, 133.

45-12-75. Budget report — Contents and form.

The budget report shall contain and include the following information:

(1) Summary statements of the financial condition of the state, accompanied by such detailed schedules of assets and liabilities as the Governor deems desirable, which shall include, but not be limited to, the following:

(A) A comparative consolidated balance sheet showing all the assets and liabilities of the state and the surplus or deficit, as the case may be, at the close of each of the two fiscal years last concluded;

(B) Summary statements of fund balances showing in detail for each fund the surplus or deficit at the beginning of each of the two fiscal years last concluded, the actual income of that year, the total appropriation of that year, and the total expenditures of that year; and

(C) Similar summary statements of the estimated fund balances for the current fiscal year and the next fiscal year;

(2) Statements of income and receipts for each of the two fiscal years last concluded, and the estimated income and receipts of the current fiscal year and the next fiscal year, and a statement of unappropriated surplus expected to have accrued in the state treasury at the beginning of the next fiscal year. The statements of income and estimated income shall be itemized by sources and by the budget unit collecting the same. The statements of receipts and estimated receipts shall be itemized by sources and by the budget unit receiving the same. Existing sources of income and receipts shall be analyzed as to their equity, productivity, and need for revision, and any proposed new sources of income or receipts shall be explained;

(3) Summary statements of expenditures and disbursements for each of the two fiscal years last concluded, itemized by budget units under functional heads and showing the amounts expended for each major function of the government;

(4) A statement of the surplus account, showing the excess of all current assets over all current liabilities as of the end of each of the two fiscal years last concluded and all changes in surplus account during each of such two fiscal years;

(5) Detailed comparative statements of expenditures and requests for appropriations by funds, budget units, and budget classes, showing the expenditures for each of the two fiscal years last concluded, the budget of the current year, and the Governor's recommendations for appropriations for each budget unit for the next fiscal year. Following the lists of actual and proposed expenditures of each budget unit there shall be a brief explanation of the functions of the unit and comments on its policies and plans and on any considerable differences among the amounts expended and the amounts recommended, with such descriptive, quantitative, comparative, and other data as to work done, unit costs, and like information as is considered necessary or desirable. In connection with each budget class of capital outlays involving construction projects to be completed in two or more fiscal years, there shall be shown the total estimated cost of each such project and the amount thereof recommended to be appropriated and expended in each ensuing fiscal year until completion of the project. Capital outlay needs shall be projected for a period that is consistent with each organization's approved strategic plan as summarized in the budget;

(6) A summary statement of the cash resources estimated to be available at the beginning of the next fiscal year and the estimated cash receipts of the fiscal year as compared with the total recommended amounts of appropriation for all budget classes for the year and, if the total of the recommended expenditures exceeds the total of the estimated resources, recommendations as to how the deficiency is to be met and estimates of receipts from any proposed additional revenues;

(7) A draft of a proposed General Appropriations Act or Acts embodying the Governor's budget report and recommendations for appropriations for the next fiscal year and drafts of such revenue and other Acts as may be recommended for putting into effect the proposed financial plan. The recommended appropriation for each budget unit shall be specified in a separate section of the General Appropriations Act. The total amount of appropriations recommended shall not exceed the cash resources available to meet expenditures under such appropriations; and

(8) Such other information as the Governor deems desirable or as is required by law. (Code 1933, § 40-406, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1963, p. 427, § 2; Ga. L. 1973, p. 673, §§ 1-5; Ga. L. 1993, p. 1914, § 4.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 133.

45-12-75.1. Annual continuation budget report.

(a) On or before October 1 of 1994 and each year thereafter, the Governor, through the Office of Planning and Budget, shall prepare and submit to the Budgetary Responsibility Oversight Committee a continuation budget report. On or before May 1 of 1994 and every year thereafter, the Governor, through the Office of Planning and Budget, shall consult and coordinate with the chairperson of the Budgetary Responsibility Oversight Committee to develop a list of agencies and programs in agencies which will be included in the continuation budget report for the year. Each state department shall be included in the continuation budget report not less than once every five years. The continuation budget report shall contain a detailed analysis of the funds necessary to provide services in the current fiscal year for each state agency and program examined. Such report shall address all programs and shall include a description of the purposes and accomplishments of the programs.

(b) The committee shall consider the budget report prepared pursuant to this Code section in conjunction with the audit report prepared pursuant to paragraph (4) of Code Section 50-6-24.

(c) The committee shall submit to the membership of the General Assembly within one week of the convening of each regular session of the General Assembly a list of all programs included in the continuation budget report for each department examined as well as actions recommended, if any, by the committee.

(d) It is the intent of this Code section to examine all state departments not less than once every five years. (Code 1981, § 45-12-75.1, enacted by Ga. L. 1993, p. 1914, § 5.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "Office" was substituted for "office" in the second sentence in subsection (a).

Editor's notes. — Ga. L. 1993, p. 1914,

§ 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

45-12-76. Limitations on appropriations by General Assembly; supplementary appropriations.

The General Assembly shall not appropriate funds for any given fiscal year which, in aggregate, exceed a sum equal to the amount of unappropriated surplus expected to have accrued in the state treasury at the beginning of the fiscal year, together with an amount not greater than the total treasury receipts from existing revenue sources anticipated to be collected in the fiscal year, less refunds, as estimated in the budget report and amendments thereto. Supplementary appropriations, if any, shall be made in the manner provided in Article III, Section IX, Paragraph V of the Constitution of Georgia, but in no event shall a supplementary appropriations Act continue in force and effect beyond the expiration of the General Appropriations Act in effect when such supplementary appropriations Act was adopted and approved. (Code 1933, § 40-407, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1983, p. 3, § 61.)

OPINIONS OF THE ATTORNEY GENERAL

The Governor, as director of the budget, is authorized to restrict and curtail legislative appropriations where the anticipated income of the state would otherwise be exceeded. 1952-53 Op. Att'y Gen. p. 276.

The General Assembly may not make appropriations up to a budget amount which includes an estimated lapse from appropriations for the current fiscal year. 1968 Op. Att'y Gen. No. 68-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 133.

45-12-77. Requirement of emergency appropriation; manner of allocation.

In order to provide for the emergency needs of the state agencies, which needs were not ascertainable at the time of the submission of the budget report to the General Assembly or at the time of the enactment of the General Appropriations Act, the General Appropriations Act shall contain a specific sum as an emergency appropriation. The manner of allocation of such emergency appropriation shall be as follows: the head of the budget unit desiring an allotment of funds from the appropriation shall present such request to the Governor, in such form and with such explanation as he may require, and the Governor may allow or disallow the request at his discretion. No allotment shall be made from this appropriation to a purpose which creates a continuing obligation for the state. (Code 1933, § 40-408, enacted by Ga. L. 1962, p. 17, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-12-77 imposes three express conditions upon allotments made from the Governor's emergency fund; these are: (1) that the allotments be directed at the previously unbudgeted emergency needs of (2) a state agency or budget unit, and (3) that the funding not create a continuing obligation on the part of the state. 1979 Op. Att'y Gen. No. 79-70.

The "emergency" need requirement has been consistently interpreted as meaning simply that the particular need of the state agency was not previously considered and rejected in the enactment of the General Appropriations Act. 1979 Op. Att'y Gen. 79-70.

"Budget unit" as defined by O.C.G.A. § 45-12-71 and as used in O.C.G.A. § 45-12-77 means a state department or agency which has, under general law, an independent existence and thus authority to receive and expend an appropriation; the Motor Vehicle Commission is such an agency. 1974 Op. Att'y Gen. No. 74-107.

Implied restriction on use of funds. — An overriding restriction which is implied throughout O.C.G.A. § 45-12-77 is that the agency receiving the allotment may only use the funds for purposes consistent with that agency's statutory authority. 1979 Op. Att'y Gen. No. 79-70.

Moneys from the Governor's emergency fund may only be allocated to state agencies; a state agency may, at the Governor's discretion, receive and expend an allocation from the emergency fund for any purpose consistent with the agency's enumerated powers for which no continuing state obligation is created. 1969 Op. Att'y Gen. No. 69-51.

Authorized use of emergency fund appropriations. — The Governor can allocate money from the Governor's emergency fund to the State Board of Pardons and Paroles for the purpose of employing a rehabilitation counselor and the board can legally expend such funds for such purpose. 1965-66 Op. Att'y Gen. No. 66-153.

The State Planning and Programing Bureau can use money from the Governor's emergency fund to prepare and furnish to a municipality a municipal planning study itself or, in the alternative, contract with a third party, such as a planning consultant,

for preparation of the study by the latter. 1969 Op. Att'y Gen. No. 69-51; 1969 Op. Att'y Gen. No. 312.

The Department of Industry and Trade is authorized to conduct a labor availability study for a city and may do so with money it receives from the Governor's emergency fund. 1969 Op. Att'y Gen. No. 69-389.

Proceeds from the Governor's emergency fund may be allocated to the Department of Human Resources, Division of Vocational Rehabilitation, for the purpose of contracting with the Epilepsy Association of Georgia, Inc., for a feasibility study into the use of persons disabled by epilepsy to produce and market printed circuit boards. 1979 Op. Att'y Gen. No. 79-70.

For a discussion of the uses of emergency fund appropriations by the Children and Youth Service Council as authorized by O.C.G.A. § 49-5-2, see 1968 Op. Att'y Gen. No. 68-230.

Continuing obligation not created. — The Governor can upon the Governor's own request transfer from the Governor's emergency fund funds considered necessary by the Governor to meet the needs of "special committees" falling under the Executive Department, provided, however, the transfer of funds does not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-134.

The Division for Children and Youth may contract with a county to construct and equip a temporary care facility for youths, pending juvenile delinquency proceedings, provided that funds appropriated from the Governor's emergency fund do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-119.

The Department of Human Resources may contract with a private institution for the purpose of providing day care and other specialized services for mentally retarded children, assign responsibility for the supervision of this contract to the Division for Children and Youth and use funds allocated from the Governor's emergency fund for these purposes, provided that they do not create a continuing obligation for the state. 1970 Op. Att'y Gen. 70-96.

The authority of the Veterans Service Board to construct and operate any facilities,

regardless of whether or not such power is limited to statutorily established locations, may not contradict the "continuing obligation" restriction on the use of emergency funds. 1965-66 Op. Att'y Gen. No. 66-14.

There is no violation of O.C.G.A. § 45-12-77 where the acquisition of a building will be completed with the funds presently transferred, and where there will be no additional liability accruing to the state because of the purchase. 1972 Op. Att'y Gen. No. 72-72.

Unauthorized use of emergency fund appropriations. — No state agency can be authorized an allocation from the Governor's emergency fund for the extension of a municipal water main. 1969 Op. Att'y Gen. No. 69-51.

The intent of O.C.G.A. § 35-4-7 is that each of the employers (state, county, or municipality) is authorized to pay the fees which their employees are charged by the police academy; funds obtained from the Governor's emergency fund cannot be used for the purpose of paying the fees of county and municipal police officers for attending the academy. 1965-66 Op. Att'y Gen. No. 66-18.

Although the Department of Industry and Trade may lawfully accept a grant from the Governor's emergency fund, such grant may not be utilized, by contract or otherwise, for the purpose of constructing a radio beacon at the Vidalia Municipal Airport. 1967 Op. Att'y Gen. No. 67-322.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 228.

45-12-78. Heads of budget units to submit annual estimates; preparation and submission of budget estimates of legislative and judicial agencies; review of budget estimates by Office of Planning and Budget.

(a) Not later than September 1 of each year, the head of each budget unit, other than the General Assembly and the judiciary, shall submit to the Office of Planning and Budget estimates of the financial requirements of the budget unit for the next fiscal year, on the forms and in the manner prescribed by the Office of Planning and Budget, with such explanatory data as is required by the Office of Planning and Budget. Such submission shall utilize such budget classes and be within such expenditure parameters as may be established by the Governor. The head of a budget unit also may submit such additional data as is helpful. The estimates so submitted shall bear the approval of the board or commission of each budget unit for which a board or commission is constituted.

(b) Except as otherwise provided in this subsection, the budget estimates for the General Assembly, including all the legislative agencies, shall be prepared by the Speaker of the House of Representatives and the President of the Senate and such other legislative officers as appropriate and shall be submitted to the director of the budget at the same time as other budget estimates are submitted. The Department of Audits and Accounts, for the purpose of this part, is a legislative agency and shall be construed in all respects as such; and the budget estimate for said department shall be prepared by the state auditor and shall be included in the budget report

without revision and shall not be subject to review or control by the Office of Planning and Budget. The director of the Office of Treasury and Fiscal Services shall assist in the preparation of these budget estimates, if requested. Effective with the budget estimates for the fiscal year beginning July 1, 1985, the budget estimates for the Senate, the office of the Lieutenant Governor, and the office of the Secretary of the Senate shall be prepared by the Senate; the budget estimates for the House of Representatives, the office of the Speaker of the House of Representatives, and the office of the Clerk of the House of Representatives shall be prepared by the House of Representatives; and the budget estimates for the Office of Legislative Counsel, the Office of Legislative Fiscal Officer, and the Office of Legislative Budget Analyst shall be prepared by the Legislative Services Committee. All of such budget estimates shall include such object classes as the Legislative Services Committee shall determine, and transfers of funds may be made between such object classes. Funds may also be transferred between the Senate, the office of the Lieutenant Governor, and the office of the Secretary of the Senate. Funds may also be transferred between the House of Representatives, the office of the Speaker of the House of Representatives, and the office of the Clerk of the House of Representatives. Funds may also be transferred between the Office of Legislative Counsel, the Office of Legislative Fiscal Officer, and the Office of Legislative Budget Analyst.

(c) Budget estimates for the judiciary shall be prepared by the Chief Justice of the Supreme Court and the Chief Judge of the Court of Appeals and such other judicial officers as appropriate and shall be submitted to the director of the budget at the same time as other budget estimates are submitted. The director of the Office of Treasury and Fiscal Services shall assist in the preparation of these budget estimates, if requested.

(d) All of the data relative to the legislative and judicial branches of the government shall be for the information and guidance of the Office of Planning and Budget in estimating the total financial needs of the state for the ensuing period, but none of these estimates shall be subject to revision or review by the Office of Planning and Budget and must be included in the budget report as prepared by it.

(e) To effect the goal of decentralization, prior to September 1 of each year, the Office of Planning and Budget shall send all requests for new, expanded, relocated, or renovated rental real estate space to the Department of Administrative Services for an evaluation to determine conformity with Article 2 of Chapter 5 of Title 50, the "State Space Management Act of 1976." The Department of Administrative Services shall return such evaluation to the Office of Planning and Budget prior to the Governor's submission of the budget to the General Assembly as provided in Code Section 45-12-79. (Code 1933, § 40-409, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1973, p. 673, §§ 6, 7; Ga. L. 1984, p. 359, § 8; Ga. L. 1985, p. 149, § 45; Ga. L. 1985, p. 669, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 6; Ga. L. 1994, p. 1865, § 2.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

OPINIONS OF THE ATTORNEY GENERAL

Although the budget bureau may in its discretion alter its policies regarding expenditure control, the Governor's informal 1945 order requiring a hearing and an award by the State Board of Workers' Compensation before any compensation can be paid to employees of the various departments of the state under the Workers' Compensation Act, O.C.G.A. Ch. 9, T. 34, continues in force and effect. 1969 Op. Att'y Gen. No. 69-52.

Payroll procedures for appellate courts. — The appellate courts may designate their fiscal officers to handle their payrolls under

procedures satisfactory to the appellate courts and Office of Planning and Budget; in the establishment of these procedures, the Office of Planning and Budget as an arm of the Executive Department of state government must be ever mindful of the delicate balance of power between the executive and the judiciary recognized by the General Assembly, in, for instance, O.C.G.A. §§ 45-12-78, 45-12-82 and 45-12-83, and founded upon the constitutional principle of the separation of powers. 1971 Op. Att'y Gen. No. 71-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 133.

45-12-79. Governor to examine estimates and make revisions; budget report to be printed and transmitted to General Assembly; examination of report by Governor-elect and his designated budget representatives.

(a) The Governor shall examine the statements and estimates before their submission to the General Assembly and shall make or cause to be made such further investigations by the Office of Planning and Budget, with such hearings before him as he deems advisable, and shall direct such changes or revisions in policy and program and in specific details as he finds warranted.

(b) The Governor shall have the budget report printed and copies thereof shall be transmitted to each member of the General Assembly within five days of the organization of the General Assembly.

(c) The Governor-elect and his designated budget representatives shall be entitled to examine the budget report in process and the Office of Planning and Budget shall provide him with every practicable facility for familiarizing himself with its contents. (Code 1933, § 40-410, enacted by Ga. L. 1962, p. 17, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, §§ 130, 133.

45-12-80. Appropriations Act to adopt financial plans; continuation in force of annual appropriation Acts; adoption of supplementary appropriations Acts; submission of budget to Office of Planning and Budget.

(a) The financial plan for each fiscal year, as presented in the budget report, shall be adopted, with such modifications as are made by the General Assembly, by the passage of a General Appropriations Act and such revenue and other Acts as are necessary for the purpose.

(b) Each General Appropriations Act, now of force or hereafter adopted, with such amendments as are adopted from time to time shall continue in force and effect for the next fiscal year after adoption; and it shall then expire except for the mandatory appropriations required by the Constitution of Georgia or those required to meet contractual obligations authorized by the Constitution of Georgia or the continued appropriation of federal grants.

(c) In addition to the appropriations made by the General Appropriations Act and amendments thereto, the General Assembly may make additional appropriations by Acts, which shall be known as supplementary appropriations Acts, provided no such supplementary appropriation shall be available unless there is an unappropriated surplus in the state treasury or the revenue necessary to pay such appropriation shall have been provided by a tax laid for such purpose and collected into the general fund of the state treasury. Neither house shall pass a supplementary appropriation bill until the General Appropriations Act shall have been finally adopted by both houses and approved by the Governor.

(d) The annual operating budget for each budget unit shall be submitted for approval to the Office of Planning and Budget by May 31 of the fiscal year preceding the effective date; shall be submitted on forms and in the format as determined by the Office of Planning and Budget; and shall conform to approved appropriations Acts. The total annual operating budget, including such schedules and supplementary information as may be required by the Office of Planning and Budget, shall be considered the financial plan for the budget unit. The various schedules included in the annual operating budget shall govern the approved expenditures for the applicable object class and shall ensure that these expenditures conform to both the letter and the intent of approved appropriations Acts. The Governor through the Office of Planning and Budget shall direct to be made such changes in the submitted annual operating budget as the Governor deems necessary to bring the annual operating budget into conformity with approved appropriations Acts. (Code 1933, § 40-412, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1973, p. 673, § 8; Ga. L. 1993, p. 1914, § 7.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and

may be cited as the 'Budget Accountability and Planning Act of 1993.'"

OPINIONS OF THE ATTORNEY GENERAL

When state agency may contract in one fiscal year for services for next fiscal year. — A state agency may contract with a party in one fiscal year for services to be performed in next fiscal year so long as funds to meet obligations of contract were existing in agency's appropriation and were unobligated

prior to execution of contract. 1980 Op. Att'y Gen. No. 80-163.

State agency has discretion in determining which fiscal year's funds were obligated by a particular contract. 1980 Op. Att'y Gen. No. 80-163.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, §§ 230-241.

45-12-81. Procedure and restriction for expenditures by state and budget units thereof.

All expenditures by the state and its budget units of moneys drawn from the state treasury shall be made under the authority of appropriations Acts, which shall be based upon a budget provided in this part; and no money shall be drawn from the treasury except by appropriation made by law pursuant to Article III, Section IX, Paragraph I of the Constitution of Georgia. (Code 1933, § 40-413, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1983, p. 3, § 61.)

JUDICIAL DECISIONS

Cited in Georgia Ass'n of Educators v. Harris, 403 F. Supp. 961 (N.D. Ga. 1975); Briarcliff Haven, Inc. v. Department of Hu-

man Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Acquisition of license fees only by appropriation. — Because license fees are remitted to the State Treasurer (now director of the Office of Treasury and Fiscal Services) as required by O.C.G.A. § 43-1-3, the only

method by which an examining board may acquire the use of these funds is pursuant to an appropriation by the General Assembly. 1972 Op. Att'y Gen. No. 72-112.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, §§ 230-241.

45-12-82. Periodic work programs to be filed; funds not to be allotted until program approved; content and form of program; amendment of program; filing of copies of program.

The Governor, through the Office of Planning and Budget, shall require each budget unit, other than those of the legislative branch and the judicial branch, to file periodic work programs with the Office of Planning and Budget at such time as the Office of Planning and Budget shall direct. As provided in Code Section 45-12-83, no allotment of funds shall be approved for any budget unit until such budget unit has filed a periodic work program with the Office of Planning and Budget and the periodic work program has been approved by the Governor. The work program shall be presented on forms prescribed by the Office of Planning and Budget and shall contain such information as the Governor, through the Office of Planning and Budget, may require. The work program shall include the amount of the portion of the appropriation required for the period's expenditures based on the budget prepared as provided in this part. Periodic work programs may be amended from time to time in such manner as the Office of Planning and Budget may require. A duplicate copy of all of the periodic work programs and any amendments thereto shall be filed simultaneously with the Office of Planning and Budget, the director of the Office of Treasury and Fiscal Services, the state auditor, the Comptroller General, and the Office of Legislative Budget Analyst. (Code 1933, § 40-414, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1982, p. 3, § 45; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 8.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

JUDICIAL DECISIONS

Cited in Georgia Ass'n of Educators v. Harris, 403 F. Supp. 961 (N.D. Ga. 1975); man Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).
Briarcliff Haven, Inc. v. Department of Hu-

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 226.

45-12-83. Requirement of filing of requests by budget units for allotment of funds; time and form of requests.

No funds may be made available for expenditure by any budget unit, other than the units of the legislative branch and the judicial branch, until such budget unit has filed a request for allotment of appropriations with the Office of Planning and Budget and the request for allotment has been

approved by the Governor. Requests for allotment of appropriations for ordinary, recurring expenses shall be filed not later than five days before the beginning of each month. Requests for allotment of appropriations for extraordinary expenses or capital outlay may be filed at such times as the Office of Planning and Budget may prescribe. The request for allotment shall be presented on forms prescribed by the Office of Planning and Budget and shall be supplemented by such information as the Office of Planning and Budget may require. (Code 1933, § 40-415, enacted by Ga. L. 1962, p. 17, § 1.)

JUDICIAL DECISIONS

Cited in *Busbee v. Georgia Conference, Am. Ass'n of Univ. Professors*, 235 Ga. 752, 221 S.E.2d 437 (1975); *Georgia Ass'n of Educators v. Harris*, 403 F. Supp. 961 (N.D.

Ga. 1975); *Briarcliff Haven, Inc. v. Department of Human Resources*, 403 F. Supp. 1355 (N.D. Ga. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Payroll procedures of appellate courts. — The appellate courts may designate their fiscal officers to handle their payrolls under procedures satisfactory to the appellate courts and the Office of Planning and Budget; in the establishment of these procedures, the Office of Planning and Budget as an arm of the Executive Department of state

government must be ever mindful of the delicate balance of power between the executive and the judiciary recognized by the General Assembly in, for instance, O.C.G.A. §§ 45-12-78, 45-12-82 and 45-12-83, and founded upon the constitutional principle of the separation of powers. 1971 Op. Att'y Gen. No. 71-100.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 234.

45-12-83.1. Display of state flag by agencies.

(a) As used in this Code section, the term “agency” means:

(1) Every state department, agency, board, bureau, commission, public corporation, and authority;

(2) Every county, municipal corporation, school district, or other political subdivision of this state;

(3) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state; and

(4) Every city, county, regional, or other authority established pursuant to the laws of this state.

(b) Notwithstanding the provisions of Code Section 50-3-4.1, any agency which is eligible to receive appropriated state funds shall be required to

display the Georgia state flag provided for in Code Section 50-3-1. No funds may be made available for expenditure by any agency which is not in compliance with the provisions of this subsection. The Office of Planning and Budget shall investigate any allegations of noncompliance with the provisions of this Code section. The Office of Planning and Budget and the Office of Treasury and Fiscal Services shall enforce the provisions of this Code section. (Code 1981, § 45-12-83.1, enacted by Ga. L. 2001, p. 1, § 2.)

Effective date. — This Code section became effective January 31, 2001.

Cross references. — Description of state flag, § 50-3-1.

Law reviews. — For note on the 2001 enactment of O.C.G.A. § 45-12-83.1, see 18 Ga. St. U. L. Rev. 305 (2001).

45-12-84. Review of periodic work programs and requests for allotment of funds generally.

- (a) The Governor, through the Office of Planning and Budget, shall review the periodic work programs submitted by the budget units for conformity to the budget approved by the General Assembly.
- (b) The Governor, through the Office of Planning and Budget, shall review the requests for allotment of funds for conformity to the approved periodic work program. (Code 1933, § 40-416, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 9.)

Editor’s notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Budget Accountability and Planning Act of 1993.’”

JUDICIAL DECISIONS

Cited in Georgia Ass’n of Educators v. Harris, 403 F. Supp. 961 (N.D. Ga. 1975); Briarcliff Haven, Inc. v. Department of Human Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 33 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 133.

45-12-85. Examination and investigation of periodic work programs and requests for allotment of funds.

- (a) The Governor shall examine the periodic work programs and shall make or cause to have made such further investigations by the Office of Planning and Budget, with such hearings before the Governor as he or she deems advisable, and shall direct changes in such provisions of the periodic work program as the Governor finds do not conform to the budget approved by the General Assembly.

(b) The Governor through the Office of Planning and Budget shall seek to effect economy, efficiency, decentralization of state government, and sound fiscal management in reviewing budget allotment requests and may make such changes to the budget allotment requests to meet these goals and objectives and which are consistent with and subject to the method and provisions contained in the General Appropriations Act. Upon determination that the requested budget allotment conforms with the approved work program and meets the above-mentioned goals and objectives, the Governor shall execute his or her warrant on the treasury for the funds included in the approved budget allotment. Notwithstanding any authorization for expenditure included in an appropriations Act, all appropriations in excess of the approved budget allotments for the budget year, as determined by the Office of Planning and Budget, shall cease to be an obligation of the state. The Office of Planning and Budget shall notify the Office of Legislative Budget Analyst and the Budgetary Responsibility Oversight Committee of any such action with appropriate supporting information. (Code 1933, § 40-417, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1914, § 10; Ga. L. 1994, p. 1865, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “consistent” was substituted for “consistant” in the first sentence of subsection (b).

Editor’s notes. — Ga. L. 1993, p. 1914,

§ 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Budget Accountability and Planning Act of 1993.’”

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 4. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, §§ 130, 234.

45-12-86. Governor authorized to require state agencies to reserve specified appropriations for budget reductions.

The Governor, during the first six months of a fiscal year period in which the current revenue estimate on which appropriations are based is expected to exceed actual revenues, is authorized to require state agencies to reserve such appropriations as specified by the Governor for budget reductions to be recommended to the General Assembly at its next regular session. (Code 1933, § 40-418, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1993, p. 1914, § 11.)

Editor’s notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: “This Act shall be known and

may be cited as the ‘Budget Accountability and Planning Act of 1993.’”

JUDICIAL DECISIONS

Cited in Georgia Ass'n of Educators v. man Resources, 403 F. Supp. 1355 (N.D. Ga. Harris, 403 F. Supp. 961 (N.D. Ga. 1975); 1975).
Briarcliff Haven, Inc. v. Department of Hu-

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, C.J.S. — 81A C.J.S., States, §§ 226, 227.
Territories, and Dependencies, § 76.

45-12-87. Requirement of authorization of payments and obligation; liability of persons authorizing payments or receiving payments in violation of provisions of part.

No payment shall be made and no obligation shall be incurred against any appropriation unless such payment or obligation has been authorized as provided in this part. Every official authorizing payments in violation of this part, or taking part therein, and every person receiving such payment, or any part thereof, shall be jointly and severally liable to the state for the full amount so paid or received. (Code 1933, § 40-419, enacted by Ga. L. 1962, p. 17, § 1.)

JUDICIAL DECISIONS

O.C.G.A. § 45-12-87 prohibits deficit financing. Briarcliff Haven, Inc. v. Department of Human Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).
Am. Ass'n of Univ. Professors, 235 Ga. 752, 221 S.E.2d 437 (1975); Georgia Ass'n of Educators v. Harris, 403 F. Supp. 961 (N.D. Ga. 1975).
Cited in Busbee v. Georgia Conference,

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, C.J.S. — 81A C.J.S., States, § 133.
Territories, and Dependencies, § 76.

45-12-88. Budget units to furnish information to Budgetary Responsibility Oversight Committee before instituting new programs.

When any budget unit has plans to institute any new program, it shall be the duty of the head of such unit to furnish to the Budgetary Responsibility Oversight Committee, on September 1 prior to the convening date of the session at which appropriations to finance such program are to be sought, a description of the program, the reason for seeking to institute such program, the operating procedure of such program, the manner in which it conforms to the organization's strategic plan as well as the state strategic plan, the extent to which the facilities and staff to implement or provide the program will be decentralized, and any other information which would be helpful to the members of the committee in determining whether or not to

appropriate funds therefor. The members shall also be furnished with the projected cost to implement the program fully. (Code 1933, § 40-419.1, enacted by Ga. L. 1970, p. 637, § 1; Ga. L. 1993, p. 1914, § 12; Ga. L. 1994, p. 1865, § 4.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and

may be cited as the 'Budget Accountability and Planning Act of 1993.'"

OPINIONS OF THE ATTORNEY GENERAL

Collection and distribution of information. — The Governor, as director of the budget, may instruct the budget bureau to collect from the budget unit heads the information required by O.C.G.A. § 45-12-88, and to have such information distributed to each member of the General Assembly at least 45 days prior to the convening date of the General Assembly. 1970 Op. Att'y Gen. No. 70-175.

Information from Board of Regents. —

The General Assembly is within its power to require information of the Board of Regents under O.C.G.A. § 45-12-88 so long as its exercise of the power does not infringe upon the constitutional power of the board to govern the University System, particularly its power to receive and allocate as a lump sum "appropriations made for the use of any or all institutions in the university system." 1998 Op. Att'y Gen. No. U98-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 33 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 234.

45-12-89. Appropriations not expended or obligated at end of fiscal year to lapse.

At the end of each fiscal year, the amount of each appropriation provided for in this part, except for the mandatory appropriations required by the Constitution of Georgia, remaining unexpended and not contractually obligated in writing shall lapse and cease to be available; and the state treasury shall not pay any unallotted appropriations and shall make the necessary adjustments in its appropriation accounts to charge off the amount of the lapsed appropriations. All appropriated funds, except for the mandatory appropriations required by the Constitution of Georgia, remaining unexpended and not contractually obligated at the expiration of the General Appropriations Act shall lapse. (Code 1933, § 40-420, enacted by Ga. L. 1962, p. 17, § 1; Ga. L. 1973, p. 673, § 9.)

JUDICIAL DECISIONS

Cited in *Busbee v. Georgia Conference, Am. Ass'n of Univ. Professors*, 235 Ga. 752, 221 S.E.2d 437 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Appropriation of funds in reserve. — A reserve consists of the funds from a prior fiscal year's appropriation which have been obligated, so as to preclude lapse, but which have yet to be expended. Such funds would only be available for further appropriation in the event that the obligation against them were to be extinguished by the operation of a statute of limitations or some other means which would preclude the legal necessity of satisfying the obligation. 1979 Op. Att'y Gen. No. U79-26.

Funds in reserves may not be appropriated in fiscal years subsequent to those in which the reserves were created as long as the obligations against such reserves remain outstanding. 1979 Op. Att'y Gen. No. U79-26.

When state agency may contract in one fiscal year for services for next fiscal year. —

A state agency may contract with a party in one fiscal year for services to be performed in next fiscal year so long as funds to meet obligations of contract were existing in agency's appropriation and were unobligated prior to the execution of contract. 1980 Op. Att'y Gen. No. 80-163.

State agency has discretion in determining which fiscal year's funds were obligated by a particular contract. 1980 Op. Att'y Gen. No. 80-163.

Lapse of appropriations that become deobligated. — Appropriated state funds which become deobligated during a subsequent fiscal year are subject to lapse, and may not be applied to contracts for which motor fuel tax appropriations were previously committed. 1993 Op. Att'y Gen. No. 93-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 240.

45-12-90. Disposition of appropriation for duties, purposes, and objects which have been transferred.

In the event that any duties, purposes, and objects for which appropriations are made shall be transferred to a budget unit other than that to which appropriated, the appropriations for such duties, purposes, and objects shall be made available, subject to this part, to such budget unit or budget units to which the duties, purposes, and objects are transferred. Should the appropriation to be transferred not be shown in the appropriation Act as a separate and identifiable item, the amount to be transferred shall be decided by the Office of Planning and Budget in accordance with the detailed estimates or other information embodied in the budget report. (Code 1933, § 40-421, enacted by Ga. L. 1962, p. 17, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-12-90 is designed in part to prevent the failure of an appropriation, the expenditure of which is otherwise lawful, because of an improper designation of the spending agency. 1975 Op. Att'y Gen. No. 75-40.

A transfer of appropriations from the Art Commission to the Board of Regents so that

the performing arts project may be produced for educational television under the auspices of the Center for Continuing Education of the University of Georgia is permitted under O.C.G.A. § 45-12-90. 1967 Op. Att'y Gen. No. 67-212.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 241.

45-12-91. Federal funds received by state continually appropriated.

All federal funds received by the state are continually appropriated in the exact amounts and for the purposes authorized and directed by the federal government in making the grant. (Code 1933, § 40-422, enacted by Ga. L. 1962, p. 17, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 228.

45-12-92. Revenue collections to be paid to state treasury on monthly basis; effect of failure of budget unit to comply with Code section.

All departments, agencies, and budget units charged with the duty of collecting taxes, fees, assessments, or other moneys, the collection of which is imposed by law, shall pay all revenues collected by them into the state treasury on a monthly basis on or before the fifteenth day of each month for the immediately preceding month's collections, according to such rules and regulations as may be prescribed by the Office of Planning and Budget. No allotment of funds shall be made to any budget unit which has failed to comply fully with this Code section. (Code 1933, § 40-423, enacted by Ga. L. 1962, p. 17, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Word "law" in O.C.G.A. § 45-12-92 probably refers only to enactments of General Assembly. 1981 Op. Att'y Gen. No. 81-100.

Room and board charges of prisoners on work release must be deposited into the state treasury. 1977 Op. Att'y Gen. No. 77-77.

Proceeds from sales of unserviceable property must be deposited. — Proceeds of property sales may constitutionally be retained by the agency concerned, because such proceeds are not "taxes," "fees" or "assessments." As a matter of statute, however, most such proceeds must be paid into the state treasury: first, such proceeds would in general constitute "other moneys" within the meaning of O.C.G.A. § 45-12-92; and second, O.C.G.A. § 50-16-144 provides that the proceeds of sales of unserviceable prop-

erty shall be paid into the treasury. 1977 Op. Att'y Gen. No. 77-77.

Revenue transferred from another agency need not be deposited into state treasury. — The constitutional and statutory provisions when they speak of revenues refer to outside receipts; revenues which are received by one agency from another agency, unlike outside receipts, are already subject to the annual appropriations process; therefore, such revenues need not be deposited into the state treasury to ensure that the General Assembly can exercise control over state finances. 1977 Op. Att'y Gen. No. 77-77.

Certain income generated by judicial branch need not be deposited into state treasury. — Certain income generated by the judicial branch of government, including dues paid by members of the State Bar of

Georgia, fees paid to the office of bar admissions by applicants for admission to the bar, and fees paid by court reporters to the board of court reporting of the Judicial Counsel, may be retained by the judicial branch. 1977 Op. Att'y Gen. No. 77-77.

With respect to character examination fees paid by prospective members of the bar, neither the Constitution nor the Budget Act requires that such fees be deposited into the state treasury. 1977 Op. Att'y Gen. No. 77-77.

Fees, generated by proposed rules of the Supreme Court creating a board to determine fitness of bar applicants and an office of bar admissions, are not to be collected pursuant to any revenue statute and these fees do not have to be remitted to the state treasury. 1977 Op. Att'y Gen. No. U77-10.1.

Room and board charges collected from probationers need not be deposited into state treasury. — As there is no specific statutory premise for collecting room and board charges from probationers, by the

Department of Offender Rehabilitation, or for collecting meal money from employees working in group homes operated by the Department of Human Resources, these funds may be retained by the respective departments. 1977 Op. Att'y Gen. No. 77-77.

Probation supervision fee does not have to be paid into state treasury. — Probation supervision fee collected pursuant to probation order of sentencing court lacks statutory premise. Therefore, such a fee does not have to be paid into state treasury but, if permitted by probation order, could be retained by Department of Offender Rehabilitation. 1981 Op. Att'y Gen. No. 81-100.

Gifts and grants, whether federal or private, may be retained by an agency recipient as gifts and grants are not "taxes," "fees" or "assessments," nor is an agency under a legal duty to collect them, although some agencies are by law authorized or required to accept whatever gifts may be made available to them. 1977 Op. Att'y Gen. No. 77-77.

45-12-93. Revenue shortfall reserve; midyear adjustment reserve; 1983 and 1985 appropriations.

(a) As of June 30 of each fiscal year, the state auditor shall reserve from the state surplus an amount equal to not less than 3 nor more than 5 percent, as directed by the director of the budget, of the net revenue collections of such fiscal year, to the extent that such surplus is available therefor. This reserve shall be entitled the revenue shortfall reserve and shall be in lieu of the working reserve for high-income and low-income periods; provided, however, that the director of the budget may, with regard to all or any part of the fourth and fifth percentile so reserved, direct the return of the same to the general fund of the state treasury for appropriation according to law.

(b) As of June 30 of each fiscal year, the state auditor shall reserve from the state surplus an amount equal to 1 percent of the net revenue collections of such fiscal year, to the extent that such surplus is available therefor. This amount shall be reserved before the amount shall be reserved for the revenue shortfall reserve as provided in subsection (a) of this Code section. This reserve shall be entitled the midyear adjustment reserve and shall be available for appropriation by the General Assembly of Georgia for such purposes as it may select.

(c) Any other provision of law notwithstanding, the General Assembly of Georgia is authorized to appropriate \$5 million for State Fiscal Year 1983 from the revenue shortfall reserve.

(d) Any other provision of law notwithstanding, the General Assembly of Georgia is authorized to appropriate \$12,500,000.00 for State Fiscal Year

1985 from the revenue shortfall reserve, for the purpose of financing the construction of water and sewer projects, through loans to local governments by the Georgia Development Authority. (Ga. L. 1976, p. 420, § 1; Ga. L. 1982, p. 1288, §§ 1, 2; Ga. L. 1983, p. 1815, § 1; Ga. L. 1985, p. 252, § 5; Ga. L. 1986, p. 10, § 45; Ga. L. 1990, p. 8, § 45; Ga. L. 2000, p. 1505, § 1; Ga. L. 2001, p. 333, § 1.)

The 2000 amendment, effective May 1, 2000, substituted “not less than 3 nor more than 4 percent, as directed by the director of the budget,” for “3 percent” in the first sentence of subsection (a).

The 2001 amendment, effective April 19, 2001, in subsection (a), substituted “5 percent” for “4 percent” and added the proviso in the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, “revenue shortfall reserve” was substituted for “Revenue Shortfall Reserve” in subsection (d).

Pursuant to Code Section 28-9-5, in 1987, “of this Code section” was added at the end of the second sentence in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76.

C.J.S. — 81A C.J.S., States, § 221.

45-12-94. Striking of name of employee from requisition for allotment of funds.

Neither the Governor nor the Office of Planning and Budget shall have the power to strike arbitrarily the name of any individual employed by the state from a requisition for allotment of funds or from the budget of any budget unit, department, or agency of the state government. (Code 1933, § 40-424, enacted by Ga. L. 1962, p. 17, § 1.)

Cross references. — Procedure for hearing complaints regarding misconduct, malfeasance, incompetence, etc., of state employee, § 45-5-7.

45-12-95. Duty of Office of Planning and Budget to encourage state agencies to identify and implement cost-saving measures and to decentralize state government.

(a) It is the intent of the General Assembly to encourage state agencies to identify and implement cost-saving measures and to decentralize state government.

(b) It is the duty of the Office of Planning and Budget to assist state agencies in identifying and implementing measures that provide current services to the public at a reduced cost or improved services to the public at the same cost and that whenever possible, consistent with such objectives, those services be administered or provided from facilities that are decentralized.

(c) The Office of Planning and Budget is authorized to encourage state agencies to identify and propose cost-saving initiatives by establishing a system of financial incentives. A cost-saving initiative shall include a description of the proposed action to effect a cost reduction and the proposed use of the resulting savings. A system of financial incentives to encourage agencies to identify and propose cost-saving initiatives shall include the following provisions:

(1) Any agency that implements an approved cost-saving initiative shall be eligible to receive one-half of the resulting savings to be spent on other unfunded or underfunded needs of the agency's own choosing, provided that any such expenditures are consistent with the organization's approved strategic plan and do not create a continuing funding requirement in future fiscal years unless approved by the General Assembly in the next appropriations Act; and

(2) Where cost savings are one-time in nature, the implementing agency shall be eligible to receive one-half of the savings for one year. Where cost savings result from reductions in continuation spending, the implementing agency shall be eligible to receive one-half of the savings each year for a period of three years.

(d) The Office of Planning and Budget must review and approve all proposed cost-saving initiatives prior to their implementation for the implementing agency to be eligible for receipt of financial incentives. However, as part of this review, the Office of Planning and Budget must consult with a cross section of agencies and the Office of Legislative Budget Analyst.

(e) The Office of Planning and Budget shall maintain records on all approved cost-saving initiatives and, with the Governor's approval, shall reflect in the budget report submitted each year to the General Assembly the cost reductions in the affected agencies' budgets and the resulting financial incentives by agency.

(f) The Office of Planning and Budget shall issue rules and regulations as necessary to implement this program. (Code 1981, § 45-12-95, enacted by Ga. L. 1993, p. 1914, § 13; Ga. L. 1994, p. 97, § 45; Ga. L. 1994, p. 1865, § 5.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

PART 2

REVIEW OF APPLICATIONS FOR FEDERAL
ASSISTANCE AND STATE CONTRACTS

Subpart 1

Federal Assistance

45-12-110. Notification of intention to apply for federal assistance; adoption and promulgation of rules and regulations and forms by legislative budget analyst and director of Office of Planning and Budget.

(a) Any state department, board, bureau, commission, authority, or other state agency, except the Board of Regents of the University System of Georgia and its employees, intending to apply for any new program of federal assistance under any federal program shall notify the legislative budget analyst and the director of the Office of Planning and Budget of its intention to apply for such federal assistance at least 30 days prior to filing the application for such assistance. Such notification shall include a summary description of the proposed federal assistance project, the amount of federal funds to be requested, the amount of state matching funds, if any, to be required in connection with obtaining federal assistance, and the period of time to be covered by the proposed federal assistance project.

(b) The legislative budget analyst and the director of the Office of Planning and Budget, acting jointly or independently, are authorized and directed to devise and distribute such forms as may be necessary to carry out subsection (a) of this Code section and, in connection therewith, to adopt and promulgate such rules and regulations as may be necessary to ensure compliance with said subsection. (Ga. L. 1972, p. 411, § 1; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 203.

45-12-111. Legislative budget analyst to analyze impact of proposed federal assistance project; forwarding of copy of analysis to General Assembly members.

As soon as practicable after receiving a notification provided for in Code Section 45-12-110, it shall be the duty of the legislative budget analyst to analyze the short-term and long-term impact the proposed federal assistance project would have on state budgetary and fiscal matters if the

application for federal assistance were approved. Upon completion of said analysis, the legislative budget analyst shall forward a copy of same to the President of the Senate, the Speaker of the House of Representatives, each member of the appropriations committees of the House of Representatives and Senate, and to any member of the General Assembly requesting a copy of said analysis. (Ga. L. 1972, p. 411, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, § 203.

45-12-112. Duties of director of Office of Planning and Budget.

The director of the Office of Planning and Budget shall perform such duties in connection with receiving the notifications provided for in Code Section 45-12-110 as may be required by the Governor. (Ga. L. 1972, p. 411, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 33 et seq. **C.J.S.** — 81A C.J.S., States, § 133.

Subpart 2

State Contracts

45-12-130. State contracts over \$5,000.00 voidable without certain approval.

Any contract, contractual obligation, contractual undertaking, contractual arrangement, or agreement by which the state or any of its departments, boards, bureaus, commissions, authorities, or other agencies is obligated to, or may become obligated to, expend more than \$5,000.00 shall be voidable by the state unless:

(1) The same is approved by one of the following:

(A) The Department of Administrative Services pursuant to Article 3 of Chapter 5 of Title 50;

(B) The State Properties Commission created by Articles 2 through 5 of Chapter 16 of Title 50; or

(C) The Office of Planning and Budget, as provided in Code Section 45-12-131; or

(2) The same is exempt, as provided in Code Section 45-12-132. (Ga. L. 1972, p. 910, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 69 et seq. **C.J.S.** — 81A C.J.S., States, §§ 155-158.

45-12-131. Office of Planning and Budget to review and approve contracts; exempting of contracts.

The Office of Planning and Budget shall review and, if such contract is authorized by the appropriations Act, approve all contracts provided for by Code Section 45-12-130 and not otherwise approved by the Department of Administrative Services or the State Properties Commission. The Office of Planning and Budget is authorized to exempt, by rule or regulation, certain contracts and classes of contracts, and such exempt contracts shall be binding. (Ga. L. 1972, p. 910, § 2.)

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Contracts that Office may not review. — The Office of Planning and Budget may not review or authorize state contracts under these circumstances: (1) The contract is for \$5,000 or less; (2) one of the other two agencies identified in O.C.G.A. § 45-12-131 has already approved the contract; and (3) the contract falls within one of the three areas exempted by O.C.G.A. § 45-12-132. 1984 Op. Att'y Gen. No. 84-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 69 et seq. **C.J.S.** — 81A C.J.S., States, §§ 155-158.

45-12-132. Contracts exempt from subpart.

The following contracts are exempt from this subpart:

(1) Contracts approved by the Department of Transportation, the State Board of Education, the State Board of Technical and Adult Education, or the Board of Regents of the University System of Georgia;

(2) Construction contracts of an authority entered into after competitive bid, including amendments thereto, and emergency contracts of an authority requiring immediate execution and performance for the protection of persons or property; and

(3) Contracts of employment. (Ga. L. 1972, p. 910, § 3; Ga. L. 1989, p. 603, § 1.)

JUDICIAL DECISIONS

Cited in *Busbee v. Georgia Conference, Am. Ass'n of Univ. Professors*, 235 Ga. 752, 221 S.E.2d 437 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Professional employment services contract. — The term “contracts of employment” is broad enough to encompass a professional employment services contract, notwithstanding the fact that the contract may fall outside the normal employer-employee relationship. 1984 Op. Att’y Gen. No. 84-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 69 et seq. **C.J.S.** — 81A C.J.S., States, §§ 155-158.

PART 3

PLANNING, DEVELOPING, AND MANAGING ENERGY RESOURCES

45-12-150 through 45-12-158.

Reserved. Repealed by Ga. L. 1994, p. 1108, § 2, effective July 1, 1994.

Editor’s notes. — Ga. L. 1994, p. 1108, effective July 1, 1994, repealed former Code Sections 45-12-150 through 45-12-155, concerning planning, developing, and managing energy resources, and the Office of Energy Resources, which were based on Ga. L. 1976, p. 1740, §§ 1, 5, 6, 7; Ga. L. 1977, p. 1536, §§ 1, 2; Code 1981, § 45-12-150; Code 1981, §§ 45-12-151 through 45-12-155, as redesignated from Code 1981, §§ 45-12-154 through 45-12-158, respectively, by Ga. L. 1983, p. 1539, § 3; and Ga. L. 1990, p. 8, § 45. For provisions concerning the Division of Energy Resources, see Code Sections 50-23-30 through 50-23-35.

Ga. L. 1983, p. 1539, effective April 1, 1983, in addition to redesignating former Code Sections 45-12-154 through 45-12-158 as 45-12-151 through 45-12-155, respectively, and amending them, also reenacted § 45-12-150 without change and repealed former §§ 45-12-151 through 45-12-153, concerning the creation, composition and powers and duties of the Georgia Council for Energy Resources.

PART 4

STATE PLANNING AND DEVELOPMENT

Cross references. — Powers and duties of Department of Community Affairs relating to planning, development, etc., of local units of government, etc., § 50-8-1 et seq.

45-12-170. Office of Planning and Budget to perform planning and development function; powers and duties generally; recommendations of planned communities for state development assistance.

(a) The Office of Planning and Budget, in addition to its other functions, shall perform the function of promoting planned and orderly community development and growth throughout the state.

(b) The Office of Planning and Budget shall have the following powers and duties in performing the function prescribed in subsection (a) of this Code section:

(1) Receive and process applications for certification of planned communities as eligible for state development assistance;

(2) Make recommendations to the appropriate state officials charged with approving or certifying planned communities as eligible for state development assistance;

(3) Coordinate state development assistance to planned communities, which have been certified as eligible for such assistance, from the Department of Transportation, the State Board of Education, the Department of Natural Resources, and any other state department, agency, or instrumentality;

(4) Administer and monitor a state program for planned growth and development;

(5) Provide technical assistance to public and private developers in the area of planned growth and development;

(6) Periodically review and monitor planned communities which receive state development assistance; and

(7) Adopt and promulgate rules necessary to carry out its responsibilities under this Code section.

(c) The Office of Planning and Budget shall recommend to the appropriate state officials for approval or certification as eligible for state development assistance only those planned communities which submit a plan which meets the following criteria in addition to any other requirements prescribed by rules of the Office of Planning and Budget:

(1) Provides for the development of a new or revitalized area, including housing, jobs, and associated community facilities, occupying at least 1,000 contiguous acres or providing for the residential needs of at least 500 households, to be completed in not more than 20 years;

(2) Includes at least 15 percent of the planned area as permanent open space, exclusive of roads and streets;

(3) Provides a broad range of housing choices;

(4) Demonstrates the financial resources, organization, and ability to carry out the plan; and

(5) Has been approved by the local government or governments within which the development will be located.

(d) The Office of Planning and Budget shall recommend for certification for state development assistance all planned communities which meet the requirements of subsection (c) of this Code section. Such recommendations shall be made to the chairmen of the State Transportation Board, the State Board of Education, the Board of Natural Resources, and the

Board of Community Affairs. If a majority of said chairmen approve any recommendation, the Governor shall be authorized to certify such planned community as eligible for state development assistance. (Ga. L. 1974, p. 1215, § 2.)

Cross references. — Expending of funds by Department of Natural Resources for acquisition, construction, etc., of water and sewage treatment facilities or systems to serve planned communities, § 12-5-41. Authorization of expenditures for public roads serving planned communities, § 32-5-24.

45-12-171. Office to be principal state agency for coordinating development, demographic data, statistical coordination, and federal programs; applications for and receipt of financial assistance.

(a) The Office of Planning and Budget shall be:

(1) The principal state agency for coordinating planning and programming for comprehensive development;

(2) The state agency responsible for preparing, maintaining, and furnishing official demographic data for the state; and

(3) The principal state agency for statistical coordination and standardization.

(b) The office may apply for and receive grants-in-aid, contributions, and any other forms of financial or other assistance from any source, public or private, for the purposes of this Code section and Code Sections 45-12-172, 45-12-177, and 45-12-178.

(c) The office shall serve as the state agency for all federal programs which require state designation of a single clearing-house if federal or state law does not provide for another state agency or if the Governor does not designate another state agency by executive order. (Ga. L. 1970, p. 321, § 9; Ga. L. 1990, p. 8, § 45.)

45-12-172. Office to review and comment on proposed development programs and serve as liaison with levels of government.

The Office of Planning and Budget shall be responsible, directly or in cooperation with other agencies, for planning the following activities:

(1) Reviewing and commenting upon the interrelationship with state planning of all applications for federal financial assistance by units of local government and local public agencies, regional development centers, and state agencies; and, where appropriate, reviewing and commenting to appropriate federal or state agencies that such proposed programs satisfy the requirements of or are not inconsistent with state law or with state and area forecasts and development programs or other state policies; and

(2) Serving in a liaison capacity with federal, state, and local levels of government. (Ga. L. 1970, p. 321, § 10; Ga. L. 1989, p. 1317, § 6.19.)

45-12-173. Office to promote state development; duties of Governor; employment of personnel; furnishing of advice and assistance by other state officials.

(a) The Office of Planning and Budget shall perform the function of promoting the orderly growth and development of the state through the proper planning and programming of the affairs of state government. The Governor shall be ex officio director of state planning.

(b) The Governor, through the Office of Planning and Budget, shall make available such planning and programming service, technical assistance, information, and advice as specified in this Code section and Code Sections 45-12-174 through 45-12-176 to departments, agencies, and institutions of state government, to the General Assembly, and to local and joint units of government and other public bodies as may be appropriate to achieve the purposes of this Code section and Code Sections 45-12-174 through 45-12-176.

(c) The Governor, through the Office of Planning and Budget, shall encourage comprehensive and coordinated planning and programming of the affairs of the state government. He may inquire into the methods of planning and program development in the conduct of the affairs of state government; he may prescribe for adequate systems of records for planning and programming purposes; and he may prescribe the institution and uses of standards for effective planning and programming.

(d) The Governor shall prepare and submit to the General Assembly a development program for the consideration and review of the General Assembly. The development program shall be submitted within five days after the organization of the General Assembly for review with the budget document.

(e) The director of the Office of Planning and Budget is authorized and directed to employ fully qualified professional, technical, and clerical personnel as required to carry out the duties prescribed in this Code section and Code Sections 45-12-174 through 45-12-176.

(f) The Attorney General, the state auditor, and such other state officials as shall be called upon shall render such advice and assistance and furnish such information to the Office of Planning and Budget as may be requested and needed. (Ga. L. 1967, p. 252, § 1; Ga. L. 1990, p. 8, § 45.)

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

45-12-174. Development functions of office generally.

The Office of Planning and Budget, at the direction of the Governor and subject to Code Section 45-12-173, this Code section, and Code Sections 45-12-175 and 45-12-176, shall perform the following functions:

(1) Prepare comprehensive, long-range recommendations for the orderly and coordinative growth of the state, including, but not necessarily limited to, recommendations on long-range functional plans in such areas of state concern as transportation, outdoor recreation, water resources, and economic development, and submit such recommendations to the General Assembly;

(2) Analyze the quality and quantity of services required for the continued orderly and long-range growth of the state, taking into consideration the relationship of activities, capabilities, and future plans of local units of government, area commissions, development districts, private enterprise, and the state and federal government;

(3) Work to harmonize the planning activities of all state departments, agencies, and institutions and other public and private bodies within the state;

(4) Provide technical assistance in the development of planning programs by state departments, agencies, and institutions; local levels of government; and other public bodies within the state;

(5) Work with departments, agencies, and institutions of state government to study and review plans and programs filed with the federal government by state departments, agencies, or institutions relative to any existing, new, expanded, or amended federal-aid program;

(6) At the direction of the Governor, survey, review, and appraise the accomplishments of state government in achieving the goals and objectives set forth in the development program; and

(7) Provide assistance to the General Assembly on request and be available to assist its committees with any needed information or material. (Ga. L. 1967, p. 252, § 2; Ga. L. 1976, p. 648, § 1; Ga. L. 1990, p. 8, § 45.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, semicolons were substituted for commas following “institutions” and “government” in paragraph (4).

45-12-175. Preparation of long-range development plans by office; designation of planning officer or representative by departments, agencies, or institutions.

(a) The Governor, through the Office of Planning and Budget, shall have in continuous process and revision a strategic plan for the state as a

whole. This plan shall be updated at least on an annual basis and shall cover a minimum period of time as determined by the Office of Planning and Budget, but not less than five years. It shall have as its primary goal the improved fiscal responsibility and responsiveness of state government and the effective and efficient delivery of services throughout the geographic area of the state with an emphasis on decentralizing state government. The goals and strategies contained in this state strategic plan shall be reflected by the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government, as respectively applies, in the development of their own strategic plans which specifically deal with their respective future directions and organizational missions. Each strategic plan developed by each department, board, bureau, commission, institution, authority, and other agency of state government shall contain a description of its future direction; a statement of its organizational mission; a description of the current and anticipated future needs being addressed by its preferred future direction and organizational mission; a description of planned actions designed to address these needs; a description of the goals for the program or services to be improved; a course of action for achieving the planned improvements, including an implementation timetable; a description of the evaluation system to be used to determine if the goals are being attained; an estimated annual cost for each planned improvement of a program or service; all efforts to decentralize its administrative and operational functions; and all other items as the Office of Planning and Budget may deem necessary. Each department, board, bureau, commission, institution, authority, and other agency of state government shall submit its own strategic plan to the Office of Planning and Budget as supporting information for the budget estimates required under Code Section 45-12-78.

(b) The Office of Planning and Budget shall cause to be prepared and coordinate the development of strategic plans by departments, boards, bureaus, commissions, institutions, authorities, and other agencies to ensure that the state-wide directions are met. The Office of Planning and Budget shall:

(1) Ensure that the focus of the various plans do not conflict with the general state goals;

(2) Offer assistance to the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government in the design and execution of their programs and be the coordinating agency for the separate department or agency proposals;

(3) Phase in implementation by the various departments, boards, bureaus, commissions, institutions, authorities, and other agencies of state government. By September 1 of 1993 and each year thereafter until all departments, boards, bureaus, commissions, institutions, authorities, and other agencies have initiated strategic planning, the Office of

Planning and Budget shall notify the Budgetary Responsibility Oversight Committee as to which departments, boards, bureaus, commissions, institutions, authorities, and other agencies will initiate strategic planning in the coming year; and

(4) Present such strategic plans, in cooperation with the affected department, board, bureau, commission, institution, authority, or other agency, to the Budgetary Responsibility Oversight Committee.

(c) To assist in the development of plans and programs of state government, the Governor, through the Office of Planning and Budget, may request, as appropriate, that each department, agency, and institution of state government designate, from among its employees and officers, a planning officer or representative who shall be responsible for the planning and coordination of the activities and responsibilities of the department, agency, or institution. Such planning officer or representative shall coordinate program plans prepared for each area of program responsibility within his or her agency of the state government. (Ga. L. 1967, p. 252, § 3; Ga. L. 1993, p. 1914, § 14; Ga. L. 1994, p. 1865, § 6.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

45-12-176. Preparation and maintenance of inventory of federal programs and projects; filing of plans with office.

(a) The Governor, through the Office of Planning and Budget, shall inventory and analyze the availability of all federal programs and projects involving state government and such other federal programs as may be available to local units of government and other public bodies. This inventory shall be maintained on a current basis.

(b) Copies of existing programs and program plans prepared by state government for any federal agency in conjunction with any existing or proposed federal-aid program involving the state shall be filed as requested with the Office of Planning and Budget. (Ga. L. 1967, p. 252, § 4.)

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The Governor has authority to create the State Crime Commission as an advisory body with no substantive state powers, to secure federal assistance for criminal justice planning functions, and to employ a staff for the commission from appropriations made available for that purpose; since the commission

does not exercise executive, legislative, or judicial powers of the state, Ga. Const. 1983, Art. I, Sec. II, Para. III, does not prohibit the combination of judicial, legislative, or executive officers in its composition. 1975 Op. Att'y Gen. No. 75-142.

45-12-177. Office to review and establish state goals and policies; Governor to prepare annual policy document reflecting state strategic plan.

(a) The Office of Planning and Budget shall have the power and duty to review and consider immediate and long-range state agency proposals, goals, and directions and to establish state-wide goals and policies.

(b) The Governor, through the Office of Planning and Budget, shall prepare an annual policy document to reflect the state strategic plan and address state-wide goals, objectives, and opportunities. Such policy document shall be transmitted to the General Assembly at the beginning of each legislative session beginning with the 1994 session. (Ga. L. 1970, p. 321, § 4; Ga. L. 1993, p. 1914, § 15.)

Editor's notes. — Ga. L. 1993, p. 1914, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Budget Accountability and Planning Act of 1993.'"

45-12-178. Ongoing review by Governor of all programs and functions in state government.

(a) It is the intent of the Governor and the General Assembly that taxpayers' money be spent in the most effective and efficient manner possible in order to obtain the maximum benefit from such expenditures. In furtherance of this objective, the Governor, through the Office of Planning and Budget, shall assist the General Assembly in establishing an ongoing review and evaluation of all programs and functions in state government.

(b) The chairperson of the Budgetary Responsibility Oversight Committee shall maintain a list of those programs for which the committee is requesting evaluations. The chairperson shall provide the list, and any subsequent revisions to the list, to the director of the Governor's Office of Planning and Budget and to the state auditor.

(c) The Office of Planning and Budget, the Department of Audits and Accounts, and the Research Office of the Budgetary Responsibility Oversight Committee shall undertake and complete evaluations on as many of those requested programs as resources will permit. The Office of Legislative Budget Analyst, the Board of Regents of the University System of Georgia, and all other state agencies are authorized and directed to provide assistance to the Office of Planning and Budget, the Department of Audits and Accounts, and the Research Office of the Budgetary Responsibility Oversight Committee, as requested, in the performance of these evaluations. The Office of Planning and Budget, the Department of Audits and Accounts, and the Research Office of the Budgetary Responsibility Oversight Committee are also authorized to contract with private contractors to perform, or assist in the performance of, these evaluations.

(d) The Office of Planning and Budget, the Department of Audits and Accounts, and the Research Office of the Budgetary Responsibility Oversight Committee shall report to the Budgetary Responsibility Oversight Committee on the results of program evaluations as such evaluations are completed. Such reports shall include:

(1) Appropriate background information on the affected program, including how and why it was initiated, its functions, what group it serves, how it is organized structurally and geographically, what are its staff size and composition, and what is its workload;

(2) Financial information including the source and amounts of funding and unit costs, where applicable;

(3) A description of the program's mission, goals, and objectives and an assessment of the extent to which the program has performed in comparison;

(4) Comparisons with other applicable public and private entities as to their experiences, service levels, costs, and staff resources required;

(5) Recommendations concerning the program, including whether it should be continued as it is currently operated, continued with identified steps to remediate deficiencies or institute improvements, or discontinued. Consideration should also be given to possible privatization or consolidation with other similar programs;

(6) Information describing the locations at which the program is operated and administered and the extent to which the operation and administration could be decentralized; and

(7) Such other information as is identified as appropriate.

(e) It is the intent of the General Assembly that all programs be evaluated at least every ten years.

(f) Department heads shall respond, in writing, within 90 days of the receipt of the report to recommendations and findings by the Office of Planning and Budget or the Department of Audits and Accounts setting forth in detail the action to be taken by said department to address the recommendations and findings. Said written response shall be made to the Office of Planning and Budget, the Department of Audits and Accounts, and the Budgetary Responsibility Oversight Committee.

(g) The Research Office of the Budgetary Responsibility Oversight Committee shall verify with state departments the implementation of the departments' plans set forth in their 90 day responses as submitted in accordance with subsection (f) of this Code section. The Research Office shall inform the Budgetary Responsibility Oversight Committee about each department's progress at reasonable intervals. (Ga. L. 1970, p. 321, § 6; Ga. L. 1993, p. 1914, §§ 16, 17; Ga. L. 1994, p. 1865, § 7; Ga. L. 1995, p. 10, § 45; Ga. L. 1995, p. 923, § 2; Ga. L. 1997, p. 1535, §§ 1, 2; Ga. L. 1998, p. 128, § 45.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “Department of Audits and Accounts” was substituted for “Department of Audits” three times in subsection (c) and once in the introductory paragraph of subsection (d).

Pursuant to Code Section 28-9-5, in 1995, “and Accounts” was inserted after “Depart-

ment of Audits” in two places in subsection (f).

Editor’s notes. — Ga. L. 1993, p. 914, § 1, not codified by the General Assembly provides that: “This Act shall be known and may be cited as the ‘Budget Accounting and Planning Act of 1993.’”

ARTICLE 5

GUBERNATORIAL TRANSITION

Cross references. — Vacating of office upon permanent physical or mental disabili-

ty of holder of office, Ga. Const. 1983, Art. V, Sec. IV.

45-12-190. Short title.

This article shall be known and may be cited as “The Gubernatorial Transition Act.” (Ga. L. 1971, p. 769, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Governor, § 12 et seq.

45-12-191. Legislative intent and purpose of article.

It is the purpose of this article to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a Governor and the inauguration of a new Governor. The interest of the state requires that such transitions in the office of Governor be accomplished so as to assure continuity in the conduct of the affairs of the state government. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the state and its people. Accordingly, it is the intent of the General Assembly that appropriate actions be authorized and taken to avoid or minimize any disruption. In addition to the specific provisions contained in this article directed toward that purpose, it is the intent of the General Assembly that all officers of the state government conduct the affairs of the state government for which they exercise responsibility and authority so as to:

- (1) Be mindful of problems occasioned by transitions in the office of Governor;
- (2) Take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power; and
- (3) Otherwise promote orderly transitions in the office of Governor. (Ga. L. 1971, p. 769, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230. **C.J.S.** — 81A C.J.S., States, §§ 84, 130.

45-12-192. “Governor-elect” defined.

As used in this article, the term “Governor-elect” means the apparent successful candidate for the office of Governor who is declared duly elected by the State Election Board. (Ga. L. 1971, p. 769, § 3.)

45-12-193. Services and facilities to be provided to Governor-elect; compensation of staff members; limitation on expenditure of funds; designation of assistant to make designation or findings of necessity.

(a) The Governor-elect is authorized, in connection with his preparations for the assumption of official duties as Governor, to use necessary services and facilities, including:

(1) Suitable office space appropriately equipped with furniture, furnishings, office machines, equipment, and office supplies, as determined by the Governor-elect or his designee provided for in subsection (d) of this Code section, at such place or places within the state as the Governor-elect shall designate;

(2) Payment of the compensation of members of office staffs designated by the Governor-elect at rates determined by him. Any employee of any agency of any branch of the state government may be detailed to such staffs on a reimbursable or nonreimbursable basis with the consent of the head of the agency; and while so detailed such employee shall be responsible only to the Governor-elect for the performance of his duties. Any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment and shall retain the rights and privileges of such employment without interruption. Notwithstanding any other law, persons receiving compensation as members of office staffs under this paragraph, other than those detailed from agencies, shall be nonclassified personnel;

(3) Payment of expenses for the procurement of services of experts or consultants or organizations thereof for the Governor-elect, at rates not to exceed \$100.00 per diem for individuals;

(4) Payment of travel expenses and subsistence allowances as may be appropriate, including rental by the state government of hired motor vehicles found necessary by the Governor-elect, as authorized for persons employed intermittently or for persons serving without compensation;

(5) Communications services found necessary by the Governor-elect; and

(6) Payment of expenses for necessary printing and binding.

(b) The Governor-elect shall expend no funds for the provision of services and facilities under this article in connection with any obligations incurred by him until he is declared duly elected by the State Election Board.

(c) Each Governor-elect shall be entitled to conveyance of all mail matter sent by him in connection with his preparations for the assumption of official duties as Governor.

(d) Each Governor-elect may designate an assistant authorized to make on his behalf such designations or findings of necessity as may be required in connection with the services and facilities to be provided under this article. (Ga. L. 1971, p. 769, § 3; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230. **C.J.S.** — 81A C.J.S., States, §§ 84, 130.

45-12-194. Services and facilities to be provided to former Governor.

A succeeding Governor is authorized to provide, upon request, to each former Governor, for a period not to exceed three months from the date of the expiration of his term of office as Governor, for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this article to be provided to a Governor-elect. Any person appointed or detailed to serve a former Governor under authority of this Code section shall be appointed or detailed in accordance with and shall be subject to Code Section 45-12-193. (Ga. L. 1971, p. 769, § 4.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230. **C.J.S.** — 81A C.J.S., States, § 130.

45-12-195. Appropriation of funds for gubernatorial transition.

Such funds as may be necessary for carrying out the purposes of this article may be appropriated to the Governor-elect in an amount not to exceed \$50,000.00 for any one gubernatorial transition. The Governor shall include in the budget transmitted to the General Assembly, for the fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of this article. (Ga. L. 1971, p. 769, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 76. **C.J.S.** — 81A C.J.S., States, §§ 232, 237.

ARTICLE 6

PLANNING AND DEVELOPMENT

45-12-200. Legislative findings and purpose.

Coordinated and comprehensive planning by all levels of government within the State of Georgia is of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting coordinated and comprehensive planning by all levels of government. This article is intended to provide for the coordination of planning, at the direction of the Governor, by departments, agencies, commissions, and other institutions of the state, and this article shall be liberally construed to achieve that end. (Code 1981, § 45-12-200, enacted by Ga. L. 1989, p. 1317, § 1.1.)

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

45-12-201. Definitions.

As used in this article, the term:

- (1) "Council" means the Governor's Development Council.
- (2) "Planning" means the process of determining actions which state agencies shall take.
- (3) "State agency" means any department, agency, commission, or other institution of the executive branch of the government of the State of Georgia. (Code 1981, § 45-12-201, enacted by Ga. L. 1989, p. 1317, § 1.1.)

45-12-202. Governor's Development Council created.

The Governor's Development Council is created in the office of the Governor. (Code 1981, § 45-12-202, enacted by Ga. L. 1989, p. 1317, § 1.1.)

45-12-203. Council membership; chair; meetings.

(a) The members of the board of directors of the Georgia Regional Transportation Authority provided by Code Section 50-32-4, upon their initial appointment and thereafter, shall constitute the membership of the

council. Membership on that authority or the council shall not constitute an appointment to an office of honor or trust for purposes of subsection (a) of Code Section 50-32-4.

(b) The chair of the Georgia Regional Transportation Authority shall serve as the chair of the council.

(c) The council shall hold meetings as often as the chair determines, but not more than 12 days each year. The chair may call special meetings upon adequate written, personal, telephone, or facsimile notice to members of the council. A majority of the members of the council shall constitute a quorum for conducting business. No member may act through a proxy, designee, or delegate. The council may establish, from time to time, such additional rules and procedures as the council deems appropriate for conducting the council's business. These rules and procedures may be established in bylaws or in such other form as the council deems appropriate. (Code 1981, § 45-12-203, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 6, § 45; Ga. L. 1992, p. 2039, § 1; Ga. L. 1993, p. 1399, § 2; Ga. L. 1999, p. 112, § 5.)

Law reviews. — For note on 1999 amendment to this section, see 16 Ga. St. U.L. Rev. 233 (1999).

45-12-204. Powers and duties of council.

The council, at the direction of the Governor and subject to this article, shall perform the following functions:

(1) Advise the Governor on the state's economic development policy;

(2) Coordinate, supervise, and review planning by state agencies. This shall include, but shall not be limited to, coordination of long-range planning and coordination of the location and construction of public facilities on the basis of state, regional, and local considerations identified in the comprehensive state-wide plan developed by the Governor with the assistance of the Department of Community Affairs; and

(3) Establish procedures for, and take action to require, communication and coordination among state agencies in any respect which the council deems necessary or appropriate in order to further the coordination of planning by state agencies. (Code 1981, § 45-12-204, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 2039, § 2.)

45-12-205. Attachment to Department of Community Affairs; technical support.

The council shall be attached to the Department of Community Affairs for administrative purposes. The Department of Community Affairs and the

Office of Planning and Budget shall provide technical support to the council as directed by the chair and approved by the Governor. (Code 1981, § 45-12-205, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 1992, p. 2039, § 3; Ga. L. 1993, p. 1399, § 2; Ga. L. 1999, p. 112, § 6.)

Law reviews. — For note on 1999 amendment to this section, see 16 Ga. St. U.L. Rev. 233 (1999).

45-12-206. Cooperation of state agencies, counties, municipalities, and other political subdivisions with council.

All state agencies and all counties, municipalities, or other political subdivisions of the state, regional development centers, and other public agencies or public authorities shall have the power and authority to take all actions which may be necessary or appropriate to respond to inquiries and requests from the council, to cooperate with the council in carrying out its duties, and otherwise to take any action which the Governor or the council may direct or require in carrying out their duties under this article. (Code 1981, § 45-12-206, enacted by Ga. L. 1989, p. 1317, § 1.1.)

45-12-207. Construction of article.

The provisions of this article shall not be construed so as to permit an agency to initiate, carry out, fail to perform, or otherwise take actions in any manner which is not authorized by law applicable to such agency or the subject matter. The provisions of this article shall not be construed so as to authorize an agency to locate, fail to locate, construct, or fail to construct public projects or facilities in any manner which is inconsistent with the directives of the General Assembly as specified in the authorization of such public projects or facilities. (Code 1981, § 45-12-207, enacted by Ga. L. 1989, p. 1317, § 1.1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted “to” preceding “otherwise” in the first sentence.

CHAPTER 13

SECRETARY OF STATE

Article 1

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 45-13-46. Surrender of materials to division for preservation; preparation of certified copies.
 45-13-47. Compilation and distribution of official and statistical state register.
 45-13-48. Establishment of prices for publications; furnishing of free copies to state institutions; disposition of excess copies of publications.
 45-13-49. Printing of circulars, notices, or forms.
 45-13-50. Division facilities and records to be open to public on Saturdays.

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- 45-13-55. Georgia Historical Records Advisory Board created; purpose; members; expenses; coordinator; officers; meetings; administrative assignment; staff.
 45-13-56. Powers and duties of board.

Article 3B		Sec.	
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45-13-58.	(Repealed effective December 15, 2002) Purpose; membership; staff support; meetings; funding; powers and authority; termination.	45-13-83.	Determination of archival value of surplus printed material; release of material to Division of Archives and History; notation of release on inventory; transmission of copy of inventory to originating state agency.
Article 4		45-13-84.	Authorization for donation to nonprofit organizations of surplus printed material not having archival value; rules and regulations.
Georgia Capitol Museum		45-13-85.	Applicability of article.
45-13-60.	Created; appointment of director.		
45-13-61.	Duties of director.		
45-13-62.	Authorization to receive grants, donations, or gifts.		
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45-13-80.	Definitions.		

Cross references. — Vacating of office upon permanent physical or mental disability of holder of office, Ga. Const. 1983, Art. V, Sec. IV.

ARTICLE 1
GENERAL PROVISIONS

45-13-1. Election.

There shall be a Secretary of State who shall be elected at the same time and in the same manner as the Governor. (Ga. L. 1872, p. 80, § 6; Code 1873, § 80; Code 1882, § 80; Civil Code 1895, § 176; Civil Code 1910, § 205; Code 1933, § 40-501.)

Administrative rules and regulations. — Regulations of State of Georgia, Rules of Organization of the Office of Secretary of State, Official Compilation of Rules and Office of Secretary of State, Chapter 590-1.

JUDICIAL DECISIONS

Cited in *Stephens v. Reid*, 189 Ga. 372, 6 S.E.2d 728 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 86. **C.J.S.** — 81A C.J.S., States, § 84.

45-13-2. Bond.

Before entering on the duties of his office, the Secretary of State shall execute a bond with sufficient securities, to be approved by the Governor, in the sum of \$10,000.00, conditioned for the faithful performance of all the duties of his office and all such duties as shall be required of him by the General Assembly or the laws of this state and for a faithful accounting of all the public money or effects that may come into his hands during his continuance in office. It shall be filed in the office of the Governor; and a copy thereof, certified by one of the Governor's secretaries under the seal of the office of the Governor, shall be received in evidence in lieu of the original in any of the courts of this state. (Laws 1843, Cobb's 1851 Digest, p. 1034; Code 1863, § 82; Code 1868, § 76; Code 1873, § 81; Code 1882, § 81; Civil Code 1895, § 177; Civil Code 1910, § 206; Code 1933, § 40-502.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130 et seq. **C.J.S.** — 67 C.J.S., Officers, § 47.

45-13-3. Office; residence.

The Secretary of State shall be provided with suitable offices in the state capital, furnished at the state's expense. He shall reside at the capital and shall keep his office open daily except on Sundays and holidays. (Ga. L. 1861, p. 72, § 3; Code 1863, § 83; Code 1868, § 77; Code 1873, § 82; Code 1882, § 82; Civil Code 1895, § 178; Civil Code 1910, § 207; Code 1933, § 40-503.)

45-13-4. Compensation.

The Secretary of State shall be compensated in the amount and manner provided in Code Sections 45-7-3 and 45-7-4. He shall also receive actual transportation costs while traveling by public carrier, the legal mileage rate for use of a personal automobile, and the actual cost of lodging and meals while away from his office on official state business, as provided in Code Section 45-7-20. (Laws 1826, Cobb's 1851 Digest, p. 1027; Code 1863, §§ 85, 1572; Code 1868, §§ 79, 1634; Code 1873, §§ 84, 1640; Code 1882, §§ 84, 1640; Civil Code 1895, §§ 180, 282; Civil Code 1910, §§ 209, 317; Ga. L.

1931, p. 7, § 86; Code 1933, § 40-504; Ga. L. 1937, p. 208, § 1; Ga. L. 1941, p. 288, § 1; Ga. L. 1943, p. 356, § 2; Ga. L. 1947, p. 673, § 1; Ga. L. 1961, p. 66, § 1; Ga. L. 1967, p. 96, § 1.)

Cross references. — Mileage allowance, § 50-19-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 271 et seq.

C.J.S. — 67 C.J.S., Officers, § 226. 81A C.J.S., States, § 107.

45-13-5. Speculation on purchase or sale of wild lands.

The Secretary of State shall not, directly or indirectly, be interested or engaged in the purchase and sale of wild lands on speculation or he will be subject to removal by the Governor or the General Assembly. (Code 1933, § 40-602.)

Cross references. — Conflicts of interest of state officials and employees generally, § 45-10-20 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 173 et seq.

C.J.S. — 67 C.J.S., Officers, § 121.

ARTICLE 2

POWERS AND DUTIES GENERALLY

Cross references. — Registration with Secretary of State of trademarks or service marks, § 10-1-440 et seq. Designation of Secretary of State as commissioner of securities, § 10-5-10. Service by Secretary of State as ex officio corporation commissioner, § 14-5-20. Authority of Secretary of State to

challenge qualifications of candidates for federal and state office, § 21-2-5. Powers and duties of Secretary of State relating to elections generally, § 21-2-50 et seq. Powers and duties of Secretary of State regarding professional fund raisers and solicitors, Ch. 17, T. 43.

45-13-20. Duties of Secretary of State generally.

The Secretary of State shall have the following duties:

(1) To keep the great seal of the state, which seal was adopted August 17, 1914, and is now on deposit in the office of the Secretary of State;

(2) To keep the original Acts passed by the General Assembly and all the public records of the state not appertaining especially to other offices; to look to and preserve the records and papers belonging to the Senate and the House of Representatives; and to see that the original journals of both houses are deposited and kept in his office;

(3) To attest all grants and other public documents issuing from the Governor and requiring the great seal of the state;

(4) To keep a record of all grants issued by the state;

(5) To keep safely all bonds of agents appointed to disburse public money;

(6) To furnish to all applicants, upon the payment of the prescribed fees, copies of all records and public documents within his office and to attach the great seal of the state to such transcripts as the Governor or General Assembly may direct;

(7) To destroy, quadrennially, all election returns of those officials whose terms of office have expired, which returns are on file in his office;

(8) To keep a book showing the dates when commissions were issued for all civil and military officers;

(9) To keep safely all the records of plats of land granted and to report the condition of such records to the Governor at least once a year;

(10) To keep in his office correct maps of all the different surveys (made by state authority), and maps of surveys comprising the land lotteries, showing their division into numbers, districts, sections, and the like, with a separate map for every district;

(11) To keep a register of the various grantees and the dates of the grants;

(12) To keep correct maps of all surveys of rivers, harbors, swamps, or land, which surveys were made by the special direction of the General Assembly;

(13) When necessary, to contract for the execution of new maps or the reexecution or repair of old maps, subject to the ratification of the General Assembly;

(14) To certify under his official seal, as the Comptroller General is directed to do;

(15) To print and distribute current maps describing the boundaries of congressional districts and the legislative districts of members of the Georgia Senate and House of Representatives; and

(16) To perform all other duties which are required of him by law or which necessarily attach to his office. (Laws 1783, Cobb's 1851 Digest, p. 665; Laws 1799, Cobb's 1851 Digest, p. 959; Laws 1838, Cobb's 1851 Digest, p. 1030; Ga. L. 1861, p. 72, § 1; Code 1863, §§ 84, 85, 109; Ga. L. 1865-66, p. 249, § 1; Code 1868, §§ 78, 80, 82; Code 1873, §§ 83, 85, 87; Ga. L. 1878-79, p. 434; Code 1882, §§ 83, 85, 87; Civil Code 1895, §§ 179, 181, 183, 185; Civil Code 1910, §§ 208, 210, 212, 214; Ga. L. 1914, p.

1247; Code 1933, §§ 40-601, 40-604; Code 1933, § 40-601.1, enacted by Ga. L. 1945, p. 402, § 2; Ga. L. 1946, p. 75, §§ 2, 3; Ga. L. 1964, Ex. Sess., p. 26, § 1; Ga. L. 1986, p. 1608, § 1.)

Cross references. — Function of Secretary of State as custodian of state flag, § 50-3-4. Description of great seal of state, § 50-3-30.

JUDICIAL DECISIONS

Admissibility of copy of record. — A copy of a record furnished under O.C.G.A. § 45-13-20, is admissible in any court if it throws light on the case. *Forrell v. Hurst*, 68 Ga. 132 (1881).

A plat on file in the office of the Secretary of State is presumed to show correctly the

original divisions of the lands in question into land lots, and to correctly locate the dividing lines between them. *Turner v. Howser*, 82 Ga. App. 88, 60 S.E.2d 505 (1950).

OPINIONS OF THE ATTORNEY GENERAL

Delegation of ministerial and clerical duties. — The Secretary of State may delegate ministerial and clerical duties of a fiscal nature to an employee in the Secretary's office, but remains legally responsible for their performance. 1945-47 Op. Att'y Gen. p. 312.

The Secretary of State is bound to obey an injunction granted against the Secretary as soon as the Secretary is informed that the injunction has been granted. 1945-47 Op. Att'y Gen. p. 313.

New map necessary to correct errors. — The Secretary of State may not correct er-

rors in county maps or plats on file in the Secretary's office and if it is determined that the record is incorrect it would seem that a new map would have to be authenticated by the county surveyor or some other surveyor acting under the Secretary's authority. 1945-47 Op. Att'y Gen. p. 314.

The Secretary of State is without authority to furnish statements declaring that the State of Georgia has no interest in any designated tracts of land. 1952-53 Op. Att'y Gen. p. 264.

No state surveyor is available to survey private property in order to settle private disputes. 1962 Op. Att'y Gen. p. 394.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 128 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62.

C.J.S. — 67 C.J.S., Officers, § 44. 81A C.J.S., States, § 132.

45-13-21. Duty to prepare and deliver commissions, dedimus potestatem, and bonds to Governor for signature; executive secretary to submit Governor's appointments for preparation of commissions, dedimus potestatem, and bonds.

(a) It shall be the ministerial duty of the Secretary of State to furnish, prepare for, and deliver to the Governor for his signature and the seal of the office of the Governor all commissions, dedimus potestatem, and bonds for all public officers who are required to be commissioned by the Governor.

(b) The executive secretary of the office of the Governor shall submit to the Secretary of State a copy of all appointments to public office when made by the Governor, in order that said commissions, dedimus potestatem, and bonds may be prepared and forwarded to the Governor for his signature and the seal of the office of the Governor. (Ga. L. 1949, p. 18, §§ 1, 2; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 128 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62.

C.J.S. — 67 C.J.S., Officers, § 44. 81A C.J.S., States, § 132.

45-13-22. Distribution of Georgia Laws and journals of House and Senate; pricing.

(a) It shall be the duty of the Secretary of State to distribute the Acts and resolutions of the General Assembly of Georgia. The Secretary of State shall notify the legislative counsel of the numbers of soft-bound and hard-bound Georgia Laws needed for distribution. Hard-bound and soft-bound volumes shall be distributed as provided in this Code section. The Secretary of State shall make distribution of the bound volumes of the journals of the House and Senate. The Secretary of State shall notify the Clerk of the House and the Secretary of the Senate of the numbers of journals needed for distribution. Distribution shall be as provided in this Code section.

(b) Volumes distributed to members of the General Assembly, to libraries, to institutions of learning, or to agencies outside the State of Georgia shall become the property of the recipient. All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or to public employees within the state, other than members of the General Assembly, shall be the property of the appropriate public officer or employee during his term of office or employment and shall be turned over to his successor, and the Secretary of State shall take and retain a receipt from each such public officer or employee acknowledging this fact. The Secretary of State shall at all times use the most economical method of shipment consistent with the safety and security of the volumes. The Secretary of State shall make the distributions provided for in this Code section. Additional copies of the hard-bound volumes and soft-bound volumes of the Georgia Laws and of the House and Senate Journals may be sold by the Secretary of State to persons desiring to purchase the same. The prices at which such volumes are to be sold shall be determined by the Legislative Counsel for the Georgia Laws, by the Secretary of the Senate for the Senate Journals, and by the Clerk of the House of Representatives for the House Journals. In determining such prices such officers shall take into account the approximate cost to the state of producing such volumes and the usual and customary cost of comparable

publications. Receipts from such sales shall be deposited by the Secretary of State into the general fund of the state treasury.

(c) Each of the officers, offices, and other entities listed in this subsection shall be authorized to order up to the indicated numbers of sets of the Georgia Laws from each legislative session. Unless otherwise specified by the ordering party, each set ordered shall include both the soft-bound and hard-bound volumes, but the ordering party may specify that an order shall omit either. The numbers of sets authorized for each such officer, office, and entity shall be as follows:

(1) Law Department (including the State Law Library) — 33 sets, which number may be increased by written order of the Attorney General;

(2) Each state agency or department — one set;

(3) Each foreign government authority and each state participating in an exchange and depository program — one set;

(4) Library of Congress — two sets;

(5) Georgia Institute of Technology — one set;

(6) University of Georgia — 52 sets;

(7) Supreme Court of Georgia — 12 sets, which number may be increased by written order of the Chief Justice;

(8) Court of Appeals of Georgia — 13 sets, which number may be increased by written order of the Chief Judge;

(9) Administrative Office of the Courts — one set;

(10) Each superior court judge — one set;

(11) Each clerk of superior court — one set;

(12) District Attorney of the Atlanta Judicial Circuit — two sets;

(13) Each other district attorney — one set;

(14) Each judge of probate court — three sets, of which one set may be retained for the judge's own use, one set may be issued to the county attorney, and one set shall be placed in the county law library or retained in the judge's office for use by the general public;

(15) Each state court — one set;

(16) Each magistrate court — one set;

(17) United States Supreme Court — one set;

(18) United States Court of Appeals for the Eleventh Circuit — one set;

- (19) United States District Courts for the State of Georgia — six sets;
- (20) Clerk of the House of Representatives — five sets;
- (21) Each member of the General Assembly — one set;
- (22) House Judiciary Committee — one set;
- (23) House Majority Leader — one set;
- (24) House Minority Leader — one set;
- (25) Legislative budget analyst — one set;
- (26) Legislative counsel — 15 sets, which number may be increased by written order of the legislative counsel;
- (27) Legislative fiscal officer — one set;
- (28) President of the Senate — one set;
- (29) President pro tempore of the Senate — one set;
- (30) Secretary of the Senate — three sets;
- (31) Speaker of the House — one set; and
- (32) Senate Judiciary Committee — one set.

(d) Each of the following officers, offices, and other entities shall be authorized to order up to the indicated numbers of the Georgia Senate and House Journals from each legislative session:

- (1) Law Department (including the State Law Library) — four sets, which number may be increased by written order of the Attorney General;
- (2) Each state agency or department — one set;
- (3) State Archives — one set;
- (4) Georgia Historical Society — two sets;
- (5) Each foreign government and each state participating in an exchange and depository program — one set;
- (6) Library of Congress — two sets;
- (7) Augusta College — one set;
- (8) Georgia Institute of Technology — one set;
- (9) Georgia State University — one set;
- (10) University of Georgia — seven sets;
- (11) Department of Administrative Services — one set;
- (12) Department of Human Resources — one set;

(13) Supreme Court of Georgia — as requested in writing by the Chief Justice;

(14) Court of Appeals of Georgia — as requested in writing by the Chief Judge;

(15) Each judge of probate court — one set;

(16) Legislative counsel — five sets;

(17) Legislative fiscal officer — nine sets;

(18) Each member of the House of Representatives — one set;

(19) Speaker of the House — one set;

(20) Clerk of the House of Representatives — three sets;

(21) House Judiciary Committee — one set;

(22) House Majority Leader — one set;

(23) House Minority Leader — one set;

(24) Each member of the Senate — one set;

(25) President of the Senate — one set;

(26) President pro tempore of the Senate — one set;

(27) Secretary of the Senate — three sets; and

(28) Senate Judiciary Committee — one set.

(e) In the case of newly created courts or judgeships, and in the case of other state departments, agencies, and entities needing session laws or journals or both, requests for session laws and journals may be filled in whole or in part as the Secretary of State deems appropriate; and the Secretary of State may add names to or delete names from the distribution lists for the session laws and journals as he deems appropriate, except that the Secretary of State may not delete those authorized to order sets under subsections (c) and (d) of this Code section.

(f) Each officer, office, or other entity authorized to order Georgia Laws or Georgia Senate and House Journals pursuant to subsections (c) and (d) of this Code section shall do so by placing such order in writing to the Secretary of State prior to the end of each session of the General Assembly. A written order from an officer, office, or other entity shall remain in effect until changed by a subsequent written order. The Secretary of State shall not provide Georgia Laws or House and Senate Journals to any such officer, office, or other entity without a written order. The Secretary of State has no obligation to provide Georgia Laws or House or Senate Journals to any such officer, office, or other entity unless a written order has been placed in accordance with the time frame specified in this subsection.

(g) The Secretary of State shall reserve 30 copies each of the session laws and of the journals of the House and Senate for three years after their receipt. After three years he shall hold in reserve 15 copies of each of the laws and journals. Copies of the laws and journals in excess of the required reserve and not needed for purposes of distribution or exchange may be sold or otherwise disposed of by the Secretary of State.

(h) The Secretary of State shall act as the exchange officer of this state for the purpose of a regular exchange between this state and other states and foreign governments of the session laws and the journals of the House and Senate. To the extent that the Secretary of State deems such exchanges appropriate, if requested by the Attorney General to make such exchanges, the Secretary of State shall distribute one set of the session laws and the journals of the House and Senate to each participating state and foreign government. The session laws and journals of the House and Senate received in exchange from other states and foreign governments shall become a part of the collection of the State Law Library. (Ga. L. 1943, p. 406, § 1; Ga. L. 1960, p. 1098, § 1; Ga. L. 1980, p. 88, § 1; Ga. L. 1988, p. 7, § 2; Ga. L. 1989, p. 1129, § 7; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 782, § 2; Ga. L. 1992, p. 2431, §§ 1, 2.)

Cross references. — Duties of Secretary of State relating to summary of general amendments to Constitution of Georgia, Ga. Const. 1983, Art. X, Sec. I, Para. III and § 21-24. Depositing of engrossed copies of laws and joint resolutions in office of Secretary of State, § 28-1-11.

Editor's notes. — Ga. L. 1990, p. 782, § 5, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to Georgia Laws and journals for sessions of the General Assembly taking place after October 1, 1990.

45-13-23. Duty to provide legislative Acts to Office of Legislative Counsel.

Reserved. Repealed by Ga. L. 1990, p. 782, § 3, effective October 1, 1990.

Editor's notes. — This Code section was based on Ga. L. 1980, p. 644, § 1.

Ga. L. 1990, p. 782, § 5, provided that the

repeal shall apply with respect to Georgia Laws and journals for sessions of the General Assembly taking place after October 1, 1990.

45-13-24. Duty to mail Acts requiring referendums to local election officials.

Within one calendar week after any local Act or general Act of local application which requires a local referendum or a special election is approved by the Governor or becomes law without his approval, it shall be the duty of the Secretary of State to mail a copy of the Act, with a certificate showing the date it became law, to the election superintendent and the governing authority of each county or municipality in which it has application. (Ga. L. 1945, p. 128, § 1; Ga. L. 1986, p. 1608, § 2; Ga. L. 1990, p. 782, § 4.)

Cross references. — Duties of Secretary of State relating to summary of general amendments to Constitution of Georgia, Ga. Const. 1983, Art. X, Sec. I, Para. III and § 21-2-4. not codified by the General Assembly, was applicable with respect to Georgia Laws and journals for sessions of the General Assembly taking place after October 1, 1990.

Editor's notes. — Ga. L. 1990, p. 782, § 5,

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 132.

45-13-25. Employment of assistants to discharge functions imposed by Chapter 5 of Title 10, the “Georgia Securities Act of 1973.”

The Secretary of State may employ such assistants as may be necessary to discharge the functions imposed on him relative to Chapter 5 of Title 10, the “Georgia Securities Act of 1973,” provided that an appropriation therefor shall have been made in accordance with law. (Ga. L. 1931, p. 7, § 88; Code 1933, § 40-603.)

Administrative rules and regulations. — Rules of the Commissioner of Securities, Official Compilation of Rules and Regulations of State of Georgia, Rules of Office of Secretary of State, Chapter 590-4-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 91. **C.J.S.** — 81A C.J.S., States, § 85.

45-13-26. Designation of employees as agents to accept service of process; powers of designees; fees for acceptance of process.

(a) The Secretary of State is authorized to designate one or more of his employees as an agent for accepting service of summons or other process under any statute providing for service of summons or other process upon the Secretary of State or the Commissioner of Securities. Such designation shall be in writing, and all acts relative to such service by any such designee shall be as valid and binding as though performed in person by the Secretary of State or the Commissioner of Securities, as the case may be. The power and authority of any such designee shall cease immediately upon such designee's ceasing to be an employee of the Secretary of State.

(b) The Secretary of State shall charge and collect a fee of \$10.00 for accepting any service of summons or other process under any statute providing for such service upon the Secretary of State. (Ga. L. 1958, p. 381, § 1; Ga. L. 1965, p. 646, § 1; Ga. L. 1983, p. 1474, § 1; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

- Am. Jur. 2d.** — 62B Am. Jur. 2d, Process, §§ 234, 236. requirement of notice or presentation of claim against governmental body, 3 ALR2d 711.
- C.J.S.** — 72 C.J.S., Process, § 54.
- ALR.** — Limitation period as affected by

45-13-27. Official directory of state and county officials and officers.

It shall be the duty of the Secretary of State to publish in each odd-numbered year an official directory of state and county officials and officers. Such directory shall also contain the names of the members of the Georgia delegation to the Congress of the United States. The directory shall contain the name, political party affiliation, independent status, or nonpartisan status of each person elected to a state or county office or to the Congress of the United States from this state. The directory shall contain such additional information as the Secretary of State shall prescribe in order to make the directory a useful and convenient reference work. (Code 1981, § 45-13-27, enacted by Ga. L. 1987, p. 432, § 1; Ga. L. 1997, p. 455, § 1.)

45-13-28. Prescription of user fees for public information services and materials.

The Secretary of State shall be authorized to prescribe by rule or regulation user fees to be charged and collected for public information services and materials, including, but not limited to, the state directory and the mail reference service; and for electrostatic copies, photostatic copies, microfilm, microfiche, and photographs of information, documents, or records which the Secretary of State is statutorily required to accept, maintain, or compile. Such rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The fees shall be in such amounts which are reasonably estimated to cover the cost of the services, materials, or copies provided. (Code 1981, § 45-13-28, enacted by Ga. L. 1992, p. 2530, § 1.)

45-13-29. Commission for the Celebration of 250 Years of Representative Government in Georgia; creation; purpose; membership; powers; reimbursement; termination.

Repealed by Ga. L. 2001, p. 1043, § 1, effective January 8, 2002.

Editor's notes. — This Code section was based on Code 1981, § 45-13-24, enacted by Ga. L. 2001, p. 1043, § 1.

ARTICLE 3

DIVISION OF ARCHIVES AND HISTORY

45-13-40. Division established.

There is established within the office of the Secretary of State a Division of Archives and History in lieu of the office of compiler of state records which shall also be known as the Georgia Archives. (Ga. L. 1918, p. 137, § 1; Ga. L. 1919, p. 234, § 1; Ga. L. 1929, p. 1516; Code 1933, § 40-801; Ga. L. 2002, p. 532, § 9.)

The 2002 amendment, effective July 1, 2002, substituted "within the office of the Secretary of State a Division" for "a Department" and added "which shall also be known as the Georgia Archives".

Editor's notes. — Ga. L. 1980, p. 1199, not codified by the General Assembly, provides

that the State Archives and Records Building is designated the "Ben W. Fortson, Jr., State Archives and Records Building" in memory of and as a perpetual memorial to Honorable Ben W. Fortson, Jr.

45-13-41. Objectives and purposes generally.

The objects and purposes of the Georgia Archives shall be to:

(1) Ensure the retention and preservation of the records of any state or local agency with historical and research value by providing for the application of modern and efficient methods to the creation, utilization, maintenance, retention, preservation, and disposal of records;

(2) Provide an archival and records' depository in which to assemble and maintain the official archives and other inactive records of the state not in current and common use;

(3) Collect from the files of old newspapers, court records, church records, private collections, and other sources data of all kinds bearing upon the history of the state;

(4) Secure from private individuals, either by loan or gift, rare volumes, manuscripts, documents, and pamphlets for the use of this division;

(5) Obtain, either by loan or gift, historical trophies, souvenirs, and relics;

(6) Classify, edit, annotate, and publish from time to time such records as may be deemed expedient and proper, including messages of Governors, executive orders, state papers, and military rosters of the Revolutionary, Indian, Mexican, Civil, and European wars;

(7) Diffuse knowledge in regard to the state's history;

- (8) Prepare biennially an official register giving the latest information of an official character in regard to the state, including a full list of state officers, legislators, judges, district attorneys, members of Congress, county officials, etc., together with other pertinent items of information;
- (9) Encourage the proper marking of battlefields, houses, and other places celebrated in the history of the state;
- (10) Encourage the study of Georgia history in the public schools;
- (11) Assist in the observance of patriotic occasions;
- (12) Plan and coordinate celebrations and observations of events and anniversaries having historic or special significance to this state;
- (13) Stimulate historical research, especially in the prosecution of local histories;
- (14) Foster sentiment looking to the better protection, classification, and arrangement of records in the various courthouses of the state;
- (15) Collect biographical information in regard to all public officials and to keep same on file, in a classified arrangement, for convenient reference by investigators; and
- (16) Encourage the study of historical documents including but not limited to those which reflect our National Motto, the Declaration of Independence, the Ten Commandments, the Constitution of the United States, and such other nationally recognized documents which contributed to the history of the State of Georgia. (Ga. L. 1918, p. 137, § 1; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-802; Ga. L. 1969, p. 989, § 1; Ga. L. 1980, p. 485, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 2002, p. 532, § 10.)

The 2002 amendment, effective July 1, 2002, substituted "Georgia Archives" for "department" in the introductory language; substituted "division" for "department" at the end of paragraph (4); deleted former paragraph (12), which read: "Assist and cooperate with the members of the Georgia Commission for the National Bicentennial Celebration in carrying out the lawful functions and programs of the commission"; redesignated former paragraphs (13) through (15) as present paragraphs (12) through (14), respectively; deleted former paragraph (16), which read: "Prepare a bibliography of Georgia and indicate, by title at

least, every book written about Georgia or by Georgia authors; and"; and redesignated former paragraph (17) as present paragraph (15) and added "and" at the end.

Cross references. — Authority of department to request receipt and retention of devices forfeited due to use in crime, § 17-5-53. Authority of director of department in regard to delivery of books, papers, and other office property to successor to public office, § 45-6-12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, a comma was inserted following "the Constitution of the United States" in paragraph (16).

OPINIONS OF THE ATTORNEY GENERAL

Material gathered by the Department of Archives and History may be made available

for private publication. 1945-47 Op. Att'y Gen. p. 289.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 132.

45-13-42. Duties of department with respect to Indians generally.

Reserved. Repealed by Ga. L. 2002, p. 632, § 4, effective July 1, 2002.

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 532, § 11, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 632, § 4. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — This Code section was based on Ga. L. 1977, p. 764, § 3; Ga. L. 1980, p. 346, § 1.

45-13-43. Preservation and fostering of Indian culture and heritage.

Reserved. Repealed by Ga. L. 2002, p. 632, § 5, effective July 1, 2002.

Code Commission notes. — The amendment of this Code section by Ga. L. 2002, p. 532, § 12, irreconcilably conflicted with and was treated as superseded by Ga. L. 2002, p. 632, § 5. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — This Code section was based on Ga. L. 1977, p. 764, § 2; Ga. L. 1978, p. 979, § 1; Ga. L. 1980, p. 346, § 1.

45-13-44. Appointment of director of division; term; oath; salary; duties generally.

The division shall be under the immediate management and control of a director who shall be appointed by and serve at the pleasure of the Secretary of State. Such director shall take an oath of office as other public officials are required to do and shall be commissioned in like manner. Such director shall devote such director's time to the work of the division, using such director's best efforts to develop and build it up so as to carry out the design of its creation, and shall receive for such director's services a salary to be fixed by the Secretary of State. Such director shall have control and direction of the various activities of the division, preserve its collections, care for the official archives which may come into its custody, and perform all of the duties enumerated in Code Section 45-13-41. (Ga. L. 1918, p. 137, § 5; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-803; Ga. L. 1957, p. 496, § 1; Ga. L. 1997, p. 455, § 2; Ga. L. 2002, p. 532, § 13.)

The 2002 amendment, effective July 1, 2002, substituted "division" for "department" in the first, third, and fourth sentences.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 107, 136.

45-13-45. Powers of Secretary of State with respect to management of division generally; designation and establishment of branch depositories.

(a) The Secretary of State is authorized to adopt rules for the government of the division; to appoint a director and to provide for the selection or appointment of such other officials or employees as may be authorized; to provide for the publication, under the supervision of the director, of historical material pertaining to the state; to control and expend such appropriations as may be made for the maintenance of the Division of Archives and History; and to do such other acts and things as may be necessary to carry out the true intent and purpose of this article.

(b) The Secretary of State is authorized to designate and establish, as a branch depository of the Division of Archives and History, facilities occupied by any nonprofit historical association organized for the purpose of collecting, preserving, and diffusing information relating to the history of Georgia, which association has been in continuous existence for a period of at least 100 years; provided, however, that no such designation and establishment of a branch depository shall be made unless the Secretary of State shall obtain the prior written approval of the historical association involved and unless the funds are made available to the Secretary of State for the specific purpose of supporting such branch depository. The Secretary of State may expend such funds as are necessary or desirable for the maintenance and operation of any such facilities and for the preservation and safeguarding of the contents thereof and for the employment of such persons as are necessary or desirable for the accomplishment of same. The Secretary of State may enter into such contractual arrangements as he or she deems to be in the public interest for acquiring the title to or loan of any historical records for use in such branch depository or any other depository of the Division of Archives and History. Such branch depository shall be under the immediate management and control of the Secretary of State. The Secretary of State may abolish such branch depository at any time. (Ga. L. 1918, p. 137, § 2; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-804; Ga. L. 1965, p. 623, § 1; Ga. L. 1966, p. 461, § 1; Ga. L. 2002, p. 415, § 45; Ga. L. 2002, p. 532, § 14.)

The 2002 amendments. — The first 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a). The second 2002 amendment, effective July 1, 2002, substituted “Division of Archives and History” for “Department of Archives

and History” throughout this Code section; in subsection (a), substituted “division” for “department” near the beginning and made identical changes as the first 2002 amendment; and inserted “or she” in the third sentence of subsection (b).

JUDICIAL DECISIONS

Cited in *Save Bay Comm., Inc. v. Mayor of Savannah*, 227 Ga. 436, 181 S.E.2d 351 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. C.J.S. — 81A C.J.S., States, § 132.

45-13-46. Surrender of materials to division for preservation; preparation of certified copies.

Any state, county, or other official is authorized, in his or her discretion, to turn over for permanent preservation in the Division of Archives and History any official books, records, documents, original papers, manuscript files, newspaper files, portraits, and printed volumes not in current use in his or her office. The Secretary of State shall provide for the preservation of said materials; and, when so surrendered, copies thereof shall be made and certified by the director upon the application of any person interested, which certification shall have the same force and effect as if made by the officers originally in custody of them and for which the same fees shall be charged. (Ga. L. 1918, p. 137, § 6; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-805; Ga. L. 2002, p. 532, § 15.)

The 2002 amendment, effective July 1, 2002, in the first sentence, inserted “or her” in two places and substituted “Division of Archives and History” for “Department of Archives and History”.

OPINIONS OF THE ATTORNEY GENERAL

Preservation of tax records. — The tax commissioners should retain the records in their offices for a definite length of time; the records must be kept permanently but all records not currently in use may be turned over to the director of the Department of Archives for permanent preservation. 1963-65 Op. Att’y Gen. p. 50.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. C.J.S. — 81A C.J.S., States, § 132.

45-13-47. Compilation and distribution of official and statistical state register.

(a) An official and statistical register of the state shall be compiled every two years by the director and shall contain:

- (1) Brief sketches of the several state officials, the members of Congress from Georgia, the Supreme Court Justices, the Judges of the Court of Appeals, members of the Senate and the House of Representatives, and judges and district attorneys of the superior courts;
- (2) Rosters of all state and county officials;
- (3) Lists of all state institutions and all official boards;

(4) State and county population and election statistics; and

(5) Miscellaneous statistics bearing upon related matters of current interest or likely to be of value to the future historian.

(b) The Secretary of State is authorized to print and distribute not less than one copy of such register to each member of the General Assembly, to each state department head, to each high school in this state, and to each unit of the University System of Georgia. (Ga. L. 1918, p. 137, § 7; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-806; Ga. L. 1961, p. 238; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 132.

45-13-48. Establishment of prices for publications; furnishing of free copies to state institutions; disposition of excess copies of publications.

The Secretary of State shall fix a fair price for publications published pursuant to this article, the revenue arising from such sales to be devoted to extending the work contemplated in this article, provided that at least one copy of such publications shall be furnished free of charge to any state institution making application for same through its constituted authorities. The Secretary of State is also authorized, in his discretion, either by sale or otherwise, to dispose of such excess copies of such publications as may from time to time accumulate and, in like manner, to dispose of any editions heretofore published, of which there may be an excess on hand. (Ga. L. 1918, p. 137, § 3; Ga. L. 1931, p. 7, § 89-B; Code 1933, § 40-807; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 132.

45-13-49. Printing of circulars, notices, or forms.

All circulars, notices, or forms which may be needed for the use of the division and all official communications, reports, or any other printing of the division shall be printed and paid for as other printing of the state. (Ga. L. 1918, p. 137, § 8; Code 1933, § 40-808; Ga. L. 2002, p. 532, § 16.)

The 2002 amendment, effective July 1, 2002, substituted “division” for “department” in two places.

45-13-50. Division facilities and records to be open to public on Saturdays.

The Division of Archives and History shall make accessible to the general public for not less than the hours of 9:30 A.M. to 3:30 P.M. on every Saturday, except legal holidays and such days as may be required to relocate the division and the records therein, such records and facilities as are ordinarily available to the public during regular office hours on weekdays. (Ga. L. 1970, p. 554, § 1; Ga. L. 2002, p. 532, § 17.)

The 2002 amendment, effective July 1, 2002, substituted "Division of Archives and History" for "Department of Archives and History", substituted "for not less than the hours of 9:30 A.M. to 3:30 P.M." for "between the hours of 9:30 A.M. and 3:30 P.M.", and inserted "and such days as may be required to relocate the division and the records therein".

ARTICLE 3A

HISTORICAL RECORDS ADVISORY BOARD

45-13-55. Georgia Historical Records Advisory Board created; purpose; members; expenses; coordinator; officers; meetings; administrative assignment; staff.

(a) As used in this article, the term:

(1) "Board" means the Georgia Historical Records Advisory Board created under this article.

(2) "Division" means the Division of Archives and History.

(b) There is created and established the Georgia Historical Records Advisory Board with such powers and duties as are set forth in this article.

(c) The purpose of the board shall be to advise the Secretary of State and the Division of Archives and History; to serve as the state advisory body required by federal granting agencies; and to encourage cooperative efforts to improve the condition of Georgia's historical records.

(d) The board shall consist of 12 members to be appointed by the Governor. A majority of the members shall have recognized experience in the administration of government records, historical records, or archives or in a field of research or activity that makes extensive use of historical records. The board shall be as broadly representative as possible of the public and private archival and research communities and organizations in the state.

(e) The Governor shall designate the initial terms of the members of the board as follows: four members shall be appointed for one year; four members shall be appointed for two years; and four members shall be appointed for three years. Thereafter, all succeeding appointments shall be

for three-year terms, except that each member shall serve until a successor is appointed. Members shall be eligible for reappointment.

(f) Whenever any vacancy in the membership of the board occurs, the Governor shall appoint a qualified person to fill the unexpired term.

(g) Members of the board shall serve without compensation, except that each member who is not a state officer or state employee shall receive the same expense allowance per day as that received by a member of the General Assembly for each day that such member of the board is in attendance at a meeting of such board, plus reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance as state government employees for use of a personal car in connection with such attendance.

(h) The director of the Division of Archives and History shall serve as Georgia historical records coordinator and assist the board in its activities.

(i) The board shall elect its chair and other officers and make such bylaws for its operation as may be necessary or appropriate.

(j) The board shall meet at least once each calendar year and special meetings may be called by the chair.

(k) The board shall be administratively assigned to the division.

(l) The board shall have no permanent staff but may hire temporary staff for specific activities if funds are available. (Code 1981, § 45-13-55, enacted by Ga. L. 1993, p. 1087, § 1; Ga. L. 2002, p. 532, § 18.)

The 2002 amendment, effective July 1, 2002, substituted "Division of Archives and History" for "Department of Archives and History" in subsections (a), (c), and (h); substituted "'Division'" for "'Department'" at the beginning of paragraph (a)(2); and

substituted "division" for "department" at the end of subsection (k).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "historical records" was substituted for "Historical Records" in subsection (h).

45-13-56. Powers and duties of board.

The board shall have the following powers, duties, authorities, and functions to:

(1) Serve as the state advisory body required by federal granting authorities for state projects and to follow the regulations and guidelines promulgated by those granting authorities;

(2) Serve in an advisory capacity to the Division of Archives and History on issues concerning records;

(3) Identify endangered records of historical value and to recommend appropriate actions to protect them;

(4) Promote state-wide planning for historical records needs;

(5) Cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in furtherance of the purposes of this article;

(6) Encourage high visibility historical records projects and studies with a state-wide impact, when studies and projects cross organizational and jurisdictional lines;

(7) Foster communication among all members of the historical records community and to encourage the development and adoption of state-wide goals and common practices to improve the condition of historical records;

(8) Appoint appropriate subcommittees or advisory committees;

(9) Recommend to the State Records Committee records retention schedules for records of the board in accordance with Article 5 of Chapter 18 of Title 50, the “Georgia Records Act”;

(10) Accept and use gifts, grants, and donations for the purpose of carrying out this article. Any funds, personal property, or services received as gifts, grants, or donations shall be kept separate and apart from any funds received by state appropriations; and such funds, property, or services so received by gifts, grants, or donations shall remain under the control of and subject to the direction of the board to carry out this article and as such shall not lapse at the end of each fiscal year;

(11) Make grants for the purpose of carrying out this article. Such grants shall be made and the funds shall be administered and expended subject to this article and in accordance with the rules and regulations of the funding source; and

(12) Do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Code 1981, § 45-13-56, enacted by Ga. L. 1993, p. 1087, § 1; Ga. L. 1994, p. 97, § 45; Ga. L. 2002, p. 532, § 19.)

The 2002 amendment, effective July 1, 2002, substituted “Division of Archives and History” for “Department of Archives and History” in paragraph (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “Title 50” was substituted for “title 50” in paragraph (9).

ARTICLE 3B

COMMISSION ON GEORGIA HISTORY AND HISTORICAL TOURISM

Effective date. — This article became effective April 27, 2001.

Cross references. — Competencies and core curriculum for quality basic education in elementary and secondary schools, Pt. 2, Art. 6, Ch. 2, T. 20.

Editor’s notes. — Ga. L. 2001, p. 1043, § 2, not codified by the General Assembly, provides for the repeal of this article effective December 15, 2002.

45-13-58. (Repealed effective December 15, 2002) Purpose; membership; staff support; meetings; funding; powers and authority; termination.

(a) The General Assembly finds that:

(1) Code Section 20-2-142 requires that all public schools in Georgia provide a course of study in the history and government of Georgia and the United States and that no student shall receive a high school diploma without having successfully completed such course;

(2) Pursuant to Code Section 20-2-140, the State Board of Education is responsible for establishing a uniform sequenced core curriculum for grades kindergarten through 12 as well as the competencies for each student to master;

(3) Pursuant to its statutory powers, the State Board of Education in 1988 adopted a quality core curriculum, which included a year-long course of study of Georgia history, government, culture, and geography at the eighth grade level known as "Georgia Studies";

(4) In 1997, the State Board of Education changed the title of the eighth grade social studies course to "Georgia and the American Experience," which then led some school systems to adopt an American history and government textbook instead of one devoted to the study of Georgia history and government;

(5) While many different state agencies currently have responsibility for promoting some aspects of Georgia history, there are no current mechanisms for coordinating their efforts or working with cities, counties, historical societies, and other organizations;

(6) While a knowledge of Georgia history is essential to understanding Georgia's past, present, and future, many citizens of this state are uninformed about Georgia's rich history;

(7) Over the past three decades, Georgia has been one of the fastest growing states in the nation and has attracted new residents from other states and nations, many of whom are not knowledgeable about Georgia's past; and

(8) The recent experience of a number of states is that promotion of an area's historic sites, markers, monuments, museums, and other attractions can become an important tool of economic development by promoting employment, services, and tourism, which can be especially significant in rural areas without natural attractions.

(b) There shall be a Governor's Commission on Georgia History and Historical Tourism to consist of the following members:

(1) The following or their designees shall serve as ex officio members:

- (A) The Lieutenant Governor;
- (B) The Secretary of State;
- (C) The State School Superintendent;
- (D) The commissioner of industry, trade, and tourism;
- (E) The commissioner of community affairs;
- (F) The executive director of the OneGeorgia Authority;
- (G) The commissioner of natural resources;
- (H) The director of the State Parks and Historic Sites Division of the Department of Natural Resources;
- (I) The director of the Historic Preservation Division of the Department of Natural Resources;
- (J) The director of the Georgia Department of Archives and History;
- (K) The executive director of the Georgia Historical Society;
- (L) The executive director of the Atlanta History Center;
- (M) The executive director of the Georgia Trust for Historic Preservation;
- (N) The president of the Georgia Humanities Council;
- (O) The director of the Center for the Study of Georgia History at Augusta State University;
- (P) The director of the Georgia Capitol Museum; and
- (Q) The chairperson of the Georgia Civil War Commission; and

(2) The following shall serve as appointed members:

- (A) Eight members appointed by the Governor;
- (B) Four members of the Georgia Senate appointed by the Lieutenant Governor; and
- (C) Four members of the Georgia House of Representatives appointed by the Speaker of the House.

(c) The Governor shall designate from the ex officio or appointed members a chairperson, vice chairperson, and secretary.

(d) Vacancies in the membership of the officers of the commission shall be filled in the same manner as the original appointments were made.

(e) At the first meeting of the commission, ex officio and appointed members may elect not more than eight additional members from the state

at large to ensure appropriate representation of geographic regions, ethnicity, historical organizations, educational institutions and scholars, and federal or local agencies involved in historical promotion and preservation.

(f) Staff support for the commission shall be provided by the Carl Vinson Institute of Government at the University of Georgia.

(g) An organizational meeting of the commission shall be convened at the state capitol within 45 days after adjournment sine die of the 2001 Session of the General Assembly, such meeting time to be set by the Governor and the chairperson of the commission. Afterwards, the commission shall hold at least one meeting during 2001 in each of the four geographic regions of the state. Each meeting shall be well publicized in advance, with members of the public, historical organizations, educational institutions, and other interested parties invited to testify as to how to better promote history and historical tourism in Georgia.

(h) The commission shall be authorized and directed to study all aspects of historical education, promotion, preservation, and tourism in Georgia, with a special emphasis on:

(1) Developing a comprehensive inventory of what is currently being done in Georgia, including the responsibilities and efforts of various state, local, and federal agencies; public authorities; colleges and universities; nonprofit organizations; professional and scholarly associations and societies; museums; local historical societies; patriotic and historical organizations; public television and radio; local chambers of commerce, development authorities, and convention and visitors bureaus; websites and other Internet resources; churches; and other organizations;

(2) The status of Georgia history education in the state's public schools, colleges, and universities, including the scope and content of textbooks currently used to teach Georgia history;

(3) Developing strategies for enhancing partnerships between state, local, and federal agencies, nonprofit organizations, and schools to promote Georgia history;

(4) The experiences of other states that have an official state museum of history;

(5) How other states promote state and local history and historical tourism;

(6) How historical tourism can be used to promote economic development, especially in tier 1 and tier 2 counties, as defined by the OneGeorgia Authority;

(7) How to assist state, county, and city governments and other organizations to promote commemoration of significant anniversaries with respect to state and local history;

(8) What role the new on-line Georgia Encyclopedia will play in promoting Georgia history;

(9) Possible changes in state law that would facilitate the promotion of Georgia history and historical tourism; and

(10) Funding and other revenue issues.

(i) The commission is authorized and empowered to accept appropriations, grants, or gifts from any level of government; from any board, commission, or other unit of government; from any public corporation or authority; from any public or private organization; from any business; from any group; or from any individual. The commission shall be further empowered to hold, invest, reinvest, and disburse such grants and gifts and any income derived therefrom in carrying out the objectives and purposes of the commission and shall not be required to pay such grants and gifts or income derived therefrom into the general fund of the state treasury. The commission shall be further authorized to adopt such rules and regulations and perform such other activities as necessary or appropriate for carrying out its purposes and duties.

(j) The nonlegislative members of the commission shall receive no compensation for their service and shall not receive any reimbursement of expenses; provided, however, that to the extent that sufficient appropriations from the General Assembly, grants from the Governor's contingency fund, or other sources, gifts, or other income is received, nonlegislative members of the commission may be reimbursed upon approval by the commission for travel and expenses not to exceed the allowances authorized for members of state boards. Legislative members shall be compensated and provided with travel expenses in accordance with law, House and Senate rules, and regulations adopted by the Legislative Services Committee and Legislative Fiscal Office.

(k) To the extent that funding is available from whatever source, the Governor shall be authorized to appoint a person to serve on a part-time or full-time basis as executive director of the commission. Said executive director, if appointed, shall perform such duties as directed by the Governor or by the chairperson of the commission.

(l) No legislative member of the commission shall vote on the expenditure of funds by the commission, appointment of commission staff, or any matter of a nature properly belonging in the executive branch. However, legislative members may participate in any commission action of an advisory nature, such as making reports and recommendations.

(m) The commission shall be attached for administrative purposes to the office of the Secretary of State.

(n) The commission may make reports and recommendations to the Governor and General Assembly from time to time but shall make a final

report not later than December 15, 2002, at which time the commission shall be abolished.

(o) This Code section and this article shall be repealed on December 15, 2002. (Code 1981, § 45-13-58, enacted by Ga. L. 2001, p. 1043, § 2.)

Editor's notes. — Ga. L. 2001, p. 1043, provides for the repeal of this Code section § 2, not codified by the General Assembly, effective December 15, 2002.

ARTICLE 4

GEORGIA CAPITOL MUSEUM

45-13-60. Created; appointment of director.

There is created a division in the office of the Secretary of State to be known as the Georgia Capitol Museum. The division shall be under the control and supervision of the Secretary of State. There shall be a director of the division who shall be appointed as are other employees in the office of the Secretary of State. (Ga. L. 1955, p. 350, § 1; Ga. L. 1997, p. 455, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 132.

45-13-61. Duties of director.

The director shall install exhibits for the museum, prepare and distribute publications concerning the museum's features, prepare semitechnical materials for distribution to the schools of this state, conduct tours of the museum, and perform such other duties and functions as are ordinarily exercised by a director of a museum. (Ga. L. 1955, p. 350, § 2.)

45-13-62. Authorization to receive grants, donations, or gifts.

The division is authorized to receive, on behalf of the state, any grants, donations, or gifts of money or property for use in the museum. (Ga. L. 1955, p. 350, § 3.)

ARTICLE 5

DISPOSITION OF SURPLUS STATE BOOKS

45-13-80. Definitions.

As used in this article, the term:

(1) "Agency head" means the official or body authorized to establish policy on behalf of a state agency.

(2) "Nonprofit organization" means a bona fide nonprofit civic, educational, or charitable organization.

(3) "State agency" means any department, board, bureau, commission, committee, council, court, or other agency, by whatever name designated, of the executive, legislative, or judicial branch of the state government.

(4) "Surplus printed material" means books or other printed papers owned by the state or a state agency and in the possession of a state agency, which books and papers are no longer needed by that agency, which are declared surplus by such agency, and which need not be maintained by the agency as a part of its records. (Code 1933, § 40-601a, enacted by Ga. L. 1978, p. 911, § 1.)

45-13-81. Secretary of State to administer article; promulgation of rules and regulations.

The Secretary of State shall be the administrator of this article; and he is authorized and directed to promulgate such rules and regulations, which may include forms, as may be necessary to carry out this article. Such rules and regulations shall be adopted and promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1933, § 40-602a, enacted by Ga. L. 1978, p. 911, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 1 Am. Jur. 2d, Administrative Law, § 126. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 50. 81A C.J.S., States, § 132.

45-13-82. Declaration of printed material as surplus; preparation of inventory of material; transmission of inventory to Secretary of State; filing of duplicate copy.

The head of each state agency is authorized to declare printed material in the possession of such state agency as surplus printed material. At the time printed material is declared to be surplus printed material, the agency head shall make or cause to be made a complete inventory of the surplus printed material. The inventory shall describe the surplus printed material in sufficient detail, if practicable, to allow the Secretary of State to make the determination provided for in Code Section 45-13-83. The inventory shall contain a statement of the declaration of the printed material as surplus printed material; such declaration shall be signed by the agency head; and the date signed shall be indicated thereon. As a part thereof or as an attachment thereto, the inventory shall show the physical location of the surplus printed material. Upon its completion, the agency head shall transmit the original of the inventory to the Secretary of State. A duplicate

of the original copy shall be retained in the files of the state agency as a part of the records of such agency. (Code 1933, § 40-603a, enacted by Ga. L. 1978, p. 911, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66. **C.J.S.** — 81A C.J.S., States, § 149.

45-13-83. Determination of archival value of surplus printed material; release of material to Division of Archives and History; notation of release on inventory; transmission of copy of inventory to originating state agency.

(a) When the Secretary of State receives an inventory of surplus printed material as provided for by Code Section 45-13-82, he or she shall make a determination of whether or not any of such surplus printed material has archival value within the meaning of Article 3 of this chapter, relating to the Division of Archives and History. The Secretary of State shall be authorized to use such personnel of the Division of Archives and History as may be necessary to make the determination provided for in this Code section. If the determination cannot be made on the basis of the description of the surplus printed material included in the inventory of such material, the Secretary of State or his or her designee shall visit the state agency which submitted the inventory for the purpose of examining the surplus printed material listed on such inventory; and the determination required in this Code section may be made on the basis of such examination.

(b) If any surplus printed material is determined to have archival value as provided by subsection (a) of this Code section, the Secretary of State is authorized to direct the state agency which submitted the inventory to release such printed material to the Division of Archives and History. The Secretary of State shall make or cause to be made a notation on the inventory for each item of surplus printed material released to the Division of Archives and History; and a copy of such inventory, signed by the Secretary of State or his or her designee, containing the notations thereon shall be transmitted to the originating state agency. The state agency submitting the inventory shall be authorized to deliver surplus printed material having archival value to the Division of Archives and History if the state agency has transportation available for such purpose. If the state agency does not have transportation available for such purpose, the Division of Archives and History shall provide for the transportation of surplus printed material having archival value. (Code 1933, § 40-604a, enacted by Ga. L. 1978, p. 911, § 1; Ga. L. 2002, p. 532, § 20.)

The 2002 amendment, effective July 1, 2002, substituted "Division of Archives and History" for "Department of Archives and History" throughout this Code section, inserted "or she" in the first sentence of subsection (a), and inserted "or her" in the last sentence of subsection (a) and in the second sentence of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62. **C.J.S.** — 81A C.J.S., States, § 149.

45-13-84. Authorization for donation to nonprofit organizations of surplus printed material not having archival value; rules and regulations.

(a) The return to the state agency of the copy of the inventory, signed by the Secretary of State or his designee, containing the notations thereon of the surplus printed material having archival value, as provided by Code Section 45-13-83, shall serve as the authorization for the state agency to donate to any nonprofit organization the surplus printed material which does not have archival value.

(b) Each state agency donating such surplus printed material to nonprofit organizations is authorized to adopt rules and regulations governing such donations, but such rules and regulations shall be consistent with this article and with rules and regulations adopted by the Secretary of State pursuant to Code Section 45-13-81. (Code 1933, § 40-605a, enacted by Ga. L. 1978, p. 911, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66. **C.J.S.** — 81A C.J.S., States, § 149.

45-13-85. Applicability of article.

This article shall not be construed to apply to surplus books or printed material owned by the University System of Georgia, any county or independent school system, any city, county, or regional library or to any other printed material owned by any political subdivision of this state. (Code 1933, § 40-606a, enacted by Ga. L. 1978, p. 911, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66. **C.J.S.** — 81A C.J.S., States, § 149.

CHAPTER 14

COMMISSIONER OF INSURANCE

Article 1		Sec.	
General Provisions			declaring of vacancy in office and appointment of successor by Governor [Repealed].
Sec.			
45-14-1.	Election.		
45-14-2.	Bond.		
45-14-3.	Duties as Safety Fire Commissioner, Industrial Loan Commissioner, and Comptroller General.		
45-14-4.	Compensation of Commissioner and office employees.	45-14-20.	Office of Comptroller General; creation; duties.
45-14-5.	Seal; sealed copies treated as originals.	45-14-21.	Deputy comptroller general.
45-14-6 through 45-14-9.	[Redesignated].	45-14-22.	Comptroller General to keep record of appropriations, warrants, and all entries necessary for true exhibit of finances of state.
45-14-10.	Preparation of statement of account, etc., upon leaving office;	45-14-23.	Annual report to Governor.

Cross references. — Vacating of office upon permanent physical or mental disability of holder of office, Ga. Const. 1983, Art. V, Sec. IV. Procedure upon incapacitation of Comptroller General, § 45-12-23.

Editor's notes. — Ga. L. 1986, p. 855, § 25, repealed and reenacted this chapter. The former provisions of this chapter have been designated as Article 1 thereof and Article 2, pertaining to comptroller general, has been added.

ARTICLE 1

GENERAL PROVISIONS

45-14-1. Election.

There shall be a Commissioner of Insurance who shall be elected at the same time and in the same manner as the Governor is elected. (Ga. L. 1872, p. 80, § 6; Code 1873, § 98; Code 1882, § 98; Civil Code 1895, § 203; Civil Code 1910, § 235; Code 1933, § 40-1401; Ga. L. 1986, p. 855, § 25.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 86.

C.J.S. — 81A C.J.S., States, §§ 80, 84.

45-14-2. Bond.

The Commissioner of Insurance shall give a bond for the sum of \$20,000.00 subject to the same rules and regulations as the bond of the

Secretary of State. (Laws 1843, Cobb's 1851 Digest, p. 1034; Code 1863, § 94; Code 1868, § 92; Code 1873, § 99; Code 1882, § 99; Civil Code 1895, § 204; Civil Code 1910, § 236; Code 1933, § 40-1402; Ga. L. 1986, p. 855, § 25.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130 et seq., § 351 et seq. **C.J.S.** — 67 C.J.S., Officers, §§ 155-177. 81A C.J.S., States, § 127.

45-14-3. Duties as Safety Fire Commissioner, Industrial Loan Commissioner, and Comptroller General.

The Commissioner of Insurance shall be the Safety Fire Commissioner, the Industrial Loan Commissioner, and the Comptroller General. (Code 1981, § 45-14-3, enacted by Ga. L. 1986, p. 855, § 25.)

Editor's notes. — Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-3 as present Code Section 45-14-4.

45-14-4. Compensation of Commissioner and office employees.

(a) The Commissioner of Insurance shall be compensated in the amount and manner provided in Code Sections 45-7-3 and 45-7-4. He shall also be reimbursed for actual transportation costs while traveling by public carrier, the legal mileage rate for use of a personal automobile, and the actual cost of lodging and meals while away from his office on official state business as provided in Code Section 45-7-20.

(b) The Commissioner of Insurance shall fix the compensation of the employees of his office including the employees of all divisions and units, by whatever name called, over which the Commissioner of Insurance has jurisdiction, except that any employees under the merit system shall be compensated as provided by the laws, rules, and regulations relative to such system. Employees shall also be reimbursed for expenses incurred in the performance of their duties. (Laws 1826, Cobb's 1851 Digest, p. 1027; Code 1863, § 1572; Code 1868, § 1634; Code 1873, § 1640; Code 1882, § 1640; Civil Code 1895, § 282; Civil Code 1910, § 317; Ga. L. 1931, p. 7, § 78; Code 1933, § 40-1404; Ga. L. 1941, p. 240, § 1; Ga. L. 1943, p. 127, § 1; Ga. L. 1947, p. 673, § 1; Ga. L. 1963, p. 575, § 1; Ga. L. 1967, p. 96, § 3; Code 1981, § 45-14-3; Code 1981, § 45-14-4, as redesignated by Ga. L. 1986, p. 855, § 25; Ga. L. 1988, p. 13, § 45.)

Editor's notes. — Ga. L. 1986, p. 855, § 25, provided for the repeal of this Code section effective April 3, 1996. For present comparable provisions, see Code Section 45-14-5.

Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-3 as Code Section 45-14-4.

45-14-5. Seal; sealed copies treated as originals.

The Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, and the Comptroller General shall have an official seal for each office of such design as he shall select with the approval of the Governor. Every certificate and other document or paper executed by the Commissioner of Insurance, Safety Fire Commissioner, Industrial Loan Commissioner, or the Comptroller General in the pursuance of any authority conferred upon that office by law and sealed with the seal of that office and all copies or photographic copies of papers certified by him and authenticated by said seal shall in all cases be evidence "in equal and like manner" as the original thereof and in all cases be primary evidence of the contents of the original and shall be admissible in any court in this state. (Code 1981, § 45-14-5, enacted by Ga. L. 1986, p. 855, § 25.)

Editor's notes. — Ga. L. 1986, p. 855, § 25, effective April 3, 1986, repealed former § 45-14-5, which dealt with the office, residence and office hours of the

Comptroller General and was based on Laws 1826, Cobb's 1851 Digest, p. 1027; Code 1933, § 40-1403.

45-14-6 through 45-14-9.

Redesignated by Ga. L. 1986, p. 855, § 25 as §§ 45-14-20 through 45-14-23, respectively.

45-14-10. Preparation of statement of account, etc., upon leaving office; declaring of vacancy in office and appointment of successor by Governor.

Repealed by Ga. L. 1984, p. 1152, § 4, effective July 1, 1984.

Editor's notes. — This Code Section was based on Orig. Code 1863, § 103; Code 1868, § 101; Code 1873, § 109; Code 1882,

§ 109; Civil Code 1895, § 217; Civil Code 1910, § 251; Code 1933, § 40-1406.

ARTICLE 2

COMPTROLLER GENERAL

Editor's notes. — See the editor's notes at the beginning of Article 1 of this chapter.

45-14-20. Office of Comptroller General; creation; duties.

(a) There shall be in the office of the Commissioner of Insurance the office of the Comptroller General of the State of Georgia. The Commissioner of Insurance shall be the Comptroller General.

(b) It shall be the duty of the Comptroller General:

(1) To keep an account showing the several appropriations authorized by law, the time when the same are drawn from the treasury, in whose favor they are drawn, and to what fund they are charged;

(2) To examine, check, and countersign all warrants upon the treasury drawn by the Governor, the President of the Senate, and the Speaker of the House of Representatives and to charge the amount thereof to the funds on which they may be respectively drawn prior to their being presented to the Office of Treasury and Fiscal Services for payment;

(3) To audit all accounts against the state and to allow or reject the same before they are submitted to the Governor;

(4) To see that no draft or warrant shall be countersigned by him to be paid out of any appropriated fund after the fund has been exhausted; and in such case, or in any case of illegal payments from the treasury upon warrants countersigned by the Comptroller General, he and the director of the Office of Treasury and Fiscal Services with all their securities shall be jointly and severally liable upon their several bonds for the repayment of such amounts with all expenses of prosecution to the state;

(5) To receive and keep safely and collect all evidences of debt due to the state from any source other than taxes and to pay over the same to the director of the Office of Treasury and Fiscal Services as soon as collected;

(6) To keep a book in which to enter all bonds taken and to file the originals in his office;

(7) To have made suitable indexes to the record books in his office; and

(8) To certify under his official seal at all times when necessary for public use and, on application and payment of his legal fees therefor, for private use, copies of any papers kept in his office. (Laws 1799, Cobb's 1851 Digest, p. 1022; Laws 1821, Cobb's 1851 Digest, p. 1023; Laws 1823, Cobb's 1851 Digest, p. 1025; Laws 1838, Cobb's 1851 Digest, p. 1029; Laws 1839, Cobb's 1851 Digest, p. 1031; Ga. L. 1851-52, p. 288, § 14; Ga. L. 1861, p. 80, § 9; Code 1863, §§ 96, 102; Code 1868, §§ 94, 100; Code 1873, §§ 101, 107; Code 1882, §§ 101, 107; Civil Code 1895, §§ 206, 214; Civil Code 1910, §§ 238, 246; Ga. L. 1923, Ex. Sess., p. 7, § 4; Ga. L. 1931, p. 7, § 91; Code 1933, § 40-1505; Ga. L. 1956, p. 802, § 2; Ga. L. 1978, p. 309, § 3; Code 1981, § 45-14-6 :repealed]; Code 1981, § 45-14-20, as redesignated by Ga. L. 1986, p. 855, § 25; Ga. L. 1993, p. 1402, § 18.)

Cross references. — Service by Commissioner of Insurance as ex officio industrial loan commissioner, § 7-3-7. Service by Commissioner of Insurance as Safety Fire Commissioner, § 25-2-2. Designation of Comp-

troller General as Insurance Commissioner, § 45-14-3.

Editor's notes. — Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-6 as Code Section 45-14-20.

JUDICIAL DECISIONS

The Comptroller General cannot go beyond the proper books of account to ascertain how much is due by a defaulting officer, in order to issue summary process against the officer to collect the amount. *Scofield v. Perkerson*, 46 Ga. 325 (1872).

Mandamus will not lie to compel a sheriff to accept an affidavit of illegality to an execution issued by the Comptroller General against a tax collector. *Webb v. Newsom*, 138 Ga. 342, 75 S.E. 106 (1912).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 78.

432, 433. 85 C.J.S., Taxation, §§ 1004, 1006, 1019.

C.J.S. — 81A C.J.S., States, §§ 134, 239-241, 249. 84 C.J.S., Taxation, §§ 77, 78,

45-14-21. Deputy comptroller general.

The Comptroller General is authorized and directed to designate one of his employees as deputy comptroller general. In the event the Comptroller General is sick or for any other reason is absent from his office for three or more days, the deputy comptroller general shall examine, check, and countersign any warrants during the absence of the Comptroller General. (Ga. L. 1956, p. 802, § 2; Code 1981, § 45-14-7; Code 1981, § 45-14-21, as redesignated by Ga. L. 1986, p. 855, § 25.)

Cross references. — Authority of Comptroller General, as Insurance Commissioner, to appoint chief deputy insurance commissioner and other deputies, § 33-2-4.

Editor's notes. — Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-7 as Code Section 45-14-21.

45-14-22. Comptroller General to keep record of appropriations, warrants, and all entries necessary for true exhibit of finances of state.

The Comptroller General shall keep in his office a bound book in which shall be entered in alphabetical order the full amount of all annual appropriations, setting forth the amounts under their several heads; all warrants that he may check and pass, together with the fund on which they are drawn and the time, amount, and in whose favor drawn; and all entries necessary for a true exhibit of the finances of the state. (Laws 1839, Cobb's 1851 Digest, p. 1031; Code 1863, § 100; Code 1868, § 98; Code 1873, § 105; Code 1882, § 105; Civil Code 1895, § 212; Civil Code 1910, § 244; Code 1933, § 40-1506; Code 1981, § 45-14-8; Code 1981, § 45-14-22, as redesignated by Ga. L. 1986, p. 855, § 25; Ga. L. 1990, p. 8, § 45.)

Editor's notes. — Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-8 as Code Section 45-14-22.

45-14-23. Annual report to Governor.

The Comptroller General shall make an annual report to the Governor, which report shall show, from his books, a current account of all receipts and payments between the Office of Treasury and Fiscal Services and the state including the amount paid on the drafts of the President of the Senate and the Speaker of the House of Representatives as reported to him by the Office of Treasury and Fiscal Services. (Laws 1821, Cobb's 1851 Digest, p. 1024; Laws 1828, Cobb's 1851 Digest, p. 1027; Laws 1839, Cobb's 1851 Digest, p. 1032; Laws 1843, Cobb's 1851 Digest, p. 1033; Code 1863, § 97; Code 1868, § 95; Code 1873, § 102; Code 1882, § 102; Civil Code 1895, § 209; Civil Code 1910, § 241; Code 1933, § 40-1510; Ga. L. 1978, p. 309, § 3; Code 1981, § 45-14-9; Code 1981, § 45-14-23, as redesignated by Ga. L. 1986, p. 855, § 25; Ga. L. 1993, p. 1402, § 18.)

Editor's notes. — Ga. L. 1986, p. 855, § 25, redesignated former Code Section 45-14-9 as Code Section 45-14-23.

CHAPTER 15

ATTORNEY GENERAL

Article 1

General Provisions

Sec.

- 45-15-1. Election.
- 45-15-2. Compensation.
- 45-15-3. Duties generally.
- 45-15-4. Attorney General authorized to employ private counsel.
- 45-15-5. Payment for services of private counsel.
- 45-15-6. Representation of state in court of competent jurisdiction.
- 45-15-7. Discretion of Comptroller General as to requirement of services of Attorney General or of district attorneys.
- 45-15-8. Performance of legal services for Western & Atlantic Railroad.
- 45-15-9. Representation of state in United States Supreme Court and beyond state limits.
- 45-15-10. Attorney General authorized to prosecute officials, persons, firms, or corporations for violations while dealing with or for state; assistance by state court prosecuting officers.
- 45-15-11. Notification of Attorney General prior to presenting indictment to grand jury charging state officials.
- 45-15-12. Attorney General authorized to prosecute civil recovery actions against persons, firms, or corporations for violations while dealing with state or officials, employees, or entities thereof.
- 45-15-13. Representation of state authorities by Attorney General.
- 45-15-14. Exclusive authority in law matters; employment of other counsel by state authorities; designation and assignment of assistant attorneys general to perform legal services for authorities.
- 45-15-15. Attorney General to submit statement to state authority for legal services; contents; advance approval of state authority director.

Sec.

- 45-15-16. State authority to reimburse department for legal services.
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- 45-15-18. Governor may direct Attorney General to conduct investigations of departments, state officials or employees or entities dealing with state; filing and prosecution of actions; appointment of special attorney general.
- 45-15-19. Governor and General Assembly authorized to make investigations; designation of district attorney to act for state in action against Attorney General.
- 45-15-20. Charge, demand, or receipt by Attorney General of fee, perquisite, or compensation other than salary in case where state interested.

Article 2

Department of Law

- 45-15-30. Created; assistants, deputies, and other support personnel; determination of duties, salaries, and effect promotions; limitation on private practice of law; disclosure requirement for assistant attorney general representing criminal defendant.
- 45-15-31. Appointment, compensation, and removal of assistant and deputy attorneys general and law assistants.
- 45-15-32. Employment of clerical assistants for department.
- 45-15-33. Employees of department not to receive remuneration of any kind or reimbursement other than provided by article; exception.
- 45-15-34. Department as exclusive authority for executive branch in law matters.
- 45-15-35. Power of Governor to direct in-

Sec.

Article 3

Removal of Attorney General for Incapacity

stitution of proceedings and litigation by department.

45-15-36. Reimbursement of department by other state agencies for litigation expenses; submission to agency of statement of expenses.

45-15-37. Reimbursement of department by state retirement systems or Board of Workers' Compensation for services; "state retirement systems" defined; statement of expenses; advance approval of services.

Sec.

45-15-50 through 45-15-57 [Repealed].

Article 4

Counsel for Public Officials and Agencies

45-15-70. Governor authorized to provide counsel for public officials and agencies; fees and costs to be paid by state.

Cross references. — Qualifications for Attorney General, Ga. Const. 1983, Art. V, Sec. III, Para. II. Duties of Attorney General, Ga. Const. 1983, Art. V, Sec. III, Para IV.

Vacating of office upon permanent physical or mental disability of holder of office, Ga. Const. 1983, Art. V, Sec. IV.

ARTICLE 1

GENERAL PROVISIONS

45-15-1. Election.

There shall be an Attorney General of the state who shall be elected at the same time, for the same term, and in the same manner as the Governor. (Orig. Code 1863, § 341; Code 1868, § 402; Code 1873, § 367; Code 1882, § 367; Civil Code 1895, § 219; Civil Code 1910, § 253; Code 1933, § 40-1601.)

JUDICIAL DECISIONS

Cited in Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939); Stephens v. Reid, 189 Ga. 372, 6 S.E.2d 728 (1939).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 2 et seq.

C.J.S. — 7A C.J.S., Attorney General, § 3.

45-15-2. Compensation.

The Attorney General shall be compensated in the amount and manner provided in Code Sections 45-7-3 and 45-7-4. He shall also be reimbursed for actual transportation costs while traveling by public carrier, the legal mileage rate for use of a personal automobile, and the actual cost of lodging

and meals while away from his office on official state business as provided in Code Section 45-7-20. (Ga. L. 1961, p. 131, § 2; Ga. L. 1966, p. 165, § 1; Ga. L. 1967, p. 101, § 1; Ga. L. 1970, p. 15, § 1.)

Cross references. — Legal mileage allowance, § 50-19-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6. **C.J.S.** — 7A C.J.S., Attorney General, § 6.

45-15-3. Duties generally.

It is the duty of the Attorney General:

(1) When required to do so by the Governor, to give his opinion in writing, or otherwise, on any question of law connected with the interest of the state or with the duties of any of the departments;

(2) When he deems it advisable, to prepare all contracts and writings in relation to any matter in which the state is interested;

(3) When required to do so by the Governor, to participate in, on behalf of the state, all criminal actions in any court of competent jurisdiction when the district attorney thereof is being prosecuted, and all other criminal or civil actions to which the state is a party;

(4) To act as the legal adviser of the executive branch;

(5) To represent the state in all capital felony actions before the Supreme Court;

(6) To represent the state in all civil actions tried in any court; and

(7) To perform such other services as shall be required of him by law. (Laws 1799, Cobb's 1851 Digest, p. 574; Code 1863, § 343; Code 1868, § 404; Ga. L. 1873, p. 31, § 1; Code 1873, § 369; Code 1882, § 369; Civil Code 1895, § 220; Penal Code 1895, § 880; Civil Code 1910, § 254; Penal Code 1910, § 901; Code 1933, § 40-1602; Ga. L. 1975, p. 882, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "adviser" for "advisor" in paragraph (4).

Cross references. — Duty of Attorney General to represent beneficiaries of charitable trusts, § 53-12-115.

JUDICIAL DECISIONS

Waiver of Eleventh Amendment immunity not authorized. — The Attorney General lacked the statutory authority to waive the state's Eleventh Amendment immunity. *Lapides v. Board of Regents*, 251 F.3d 1372 (11th Cir. 2001).

The duties of the Attorney General are limited by O.C.G.A. § 45-15-3, and where the Constitution creates the office and prescribes the duties of the holder thereof, and declares that other duties may be imposed on the Attorney General by statute, the Attorney General has no authority to perform any act not legitimately within the scope of such statutory and constitutional provisions. *Walker ex rel. Mason v. Georgia Ry. & Power Co.*, 146 Ga. 655, 92 S.E. 57 (1917).

Attorney General properly represents one sued in capacity as state official. — Where defendant is sued in capacity as state official it is clearly proper for office of Attorney General of Georgia to act on defendant's behalf. *Cleveland v. Noland*, 510 F. Supp. 37 (N.D. Ga. 1981).

Representation before Health Planning Review Board. — The assistant attorney general fulfilled a constitutionally and statutorily

mandated dual role in representing both the State Health Planning and Development Agency and the Health Planning Review Board, but this dual role as prosecutor and legal advisor to the Review Board did not taint the opportunity of each party to present its case in full before the Review Board. *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

Injunction against ultra vires acts. — The Attorney General of this state was without authority to institute an equitable action in the name of the state, on the relation of a number of designated individuals, against a domestic corporation, to enjoin it from doing acts alleged to be ultra vires. *Walker ex rel. Mason v. Georgia Ry. & Power Co.*, 146 Ga. 655, 92 S.E. 57 (1917).

Cited in *Mitchell v. State*, 22 Ga. 211, 68 Am. Dec. 493 (1857); *Doe v. Bolton*, 319 F. Supp. 1048 (N.D. Ga. 1970).

OPINIONS OF THE ATTORNEY GENERAL

The Attorney General should not render an opinion on the constitutionality of a legislative enactment, particularly where the interest of the state is not directly involved. 1945-47 Op. Att'y Gen. p. 290.

Which does not affect the interest of the state. — It is clear from O.C.G.A. § 45-15-3 that the Attorney General is without authority to rule upon the constitutionality of any state statute which does not affect the state or the various departments of the state government; this construction is consistent with the unbroken policy of the Attorney General in considering the constitutionality of state statutes. 1948-49 Op. Att'y Gen. p. 243.

The Insurance Commissioner is entitled to representation by the Attorney General in an antitrust suit arising because of acts growing out of meetings attended by the Commissioner in the Commissioner's official capacity. 1954-56 Op. Att'y Gen. p. 437.

Department of Labor to be represented only by Attorney General. — The Department of Labor may not employ its own general counsel or otherwise provide itself with legal advice or representation other than through the Attorney General. 1984 Op. Att'y Gen. No. 84-48.

Initiation of legal actions. — Construing O.C.G.A. §§ 15-18-6 and 45-15-3 together, it is concluded that while the Attorney General must actually initiate every lawsuit brought by a state agency absent overriding legislation, district attorneys may, at the request of the Administrator of Office of Consumer Affairs, participate in Fair Business Practices Act suits brought by the administrator, so long as the statutorily imposed duties on the Attorney General are observed. 1977 Op. Att'y Gen. No. 77-67.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 7 et seq.

C.J.S. — 7A C.J.S., Attorney General, §§ 6, 7, 9, 11, 12. 81A C.J.S., States, § 126.

ALR. — Right of Attorney General or other representative of state to intervene in divorce suit, 22 ALR 1112.

Right of Attorney General to represent or

serve administrative officer or body to exclusion of attorney employe such officer or body, 137 ALR 818.

Validity, under state law, of appointment

of special prosecutor where regular prosecutor is charged with, or being investigated for, criminal or impeachable offense, 84 ALR3d 115.

45-15-4. Attorney General authorized to employ private counsel.

The Attorney General, upon the request of any department, office, officer, institution, commission, committee, board, or other agency of any branch of the government of the state or any instrumentality thereof, is authorized to select and employ private counsel to perform legal services for such department, office, officer, institution, commission, committee, board, or other agency of any branch of the government of the state or any instrumentality thereof. (Ga. L. 1971, p. 98, § 1; Ga. L. 1975, p. 1184, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent concerning employment of private counsel. — O.C.G.A. § 45-15-4 when read in conjunction with the provisions of O.C.G.A. § 45-15-34 which unequivocally provides that the State Law Department shall have complete and exclusive authority as to legal matters pertaining to state agencies, indicates that the legislative intent was that private counsel should represent state agencies only on those rare occasions when the Attorney General deems such representation to be necessary; the use of the term "employ" in O.C.G.A. § 45-15-4 does not indicate a willingness on the part of the General Assembly to authorize a state agency to be represented by private counsel of its choice who offer to do so at no expense to the agency. 1976 Op. Att'y Gen. No. 76-93.

Ethical considerations in appointing private counsel. — The Attorney General may not appoint counsel to permit the Georgia Real Estate Commission to sue the Secretary of State and the Joint Secretary of the State Examining Boards in the use of current appropriations made by the General Assembly among the various licensing boards, because the appointee would be authorized to perform such services as the Attorney General deemed appropriate, and serious ethical problems would result since the Attorney General is the legal advisor to the entire executive branch of the state government and would be obligated to represent both agencies involved. 1976 Op. Att'y Gen. No. 76-93.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7 et seq., 13 et seq.

C.J.S. — 7A C.J.S., Attorney General, §§ 4, 7.

45-15-5. Payment for services of private counsel.

Any department, office, officer, institution, commission, committee, board, or other agency of any branch of the government of the state or any instrumentality thereof is authorized and directed to pay for the legal services requested pursuant to Code Section 45-15-4, upon approval by the Attorney General of the charge for such services. (Ga. L. 1971, p. 98, § 2; Ga. L. 1975, p. 1184, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6, 13 et seq., 40. **C.J.S.** — 7A C.J.S., Attorney General, § 6.

45-15-6. Representation of state in court of competent jurisdiction.

When the services of the Attorney General are needed in any court of competent jurisdiction, the presiding judge thereof shall notify the Governor 20 days before of the time, place, and cause; and the Governor may, in his discretion, order the Attorney General to represent the state. (Orig. Code 1863, § 344; Code 1868, § 405; Code 1873, § 370; Code 1882, § 370; Civil Code 1895, § 221; Civil Code 1910, § 255; Code 1933, § 40-1603; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7, 16. **C.J.S.** — 7A C.J.S., Attorney General, §§ 2, 7. **ALR.** — Validity, under state law, of appointment of independent special prosecutor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor, 84 ALR3d 29.

45-15-7. Discretion of Comptroller General as to requirement of services of Attorney General or of district attorneys.

When the services of a district attorney are necessary in collecting or securing any claim of the state in any part of the state, the Comptroller General may, in his discretion, require the Attorney General to command the services of the Department of Law or of the district attorneys in their respective circuits in such cases. (Orig. Code 1863, § 345; Code 1868, § 406; Code 1873, § 371; Code 1882, § 371; Civil Code 1895, § 222; Civil Code 1910, § 256; Code 1933, § 40-1604.)

JUDICIAL DECISIONS

Cited in Avery v. Hale, 167 Ga. 252, 145 S.E. 76 (1928).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7, 22. **C.J.S.** — 7A C.J.S., Attorney General, § 7.

45-15-8. Performance of legal services for Western & Atlantic Railroad.

The Governor is authorized to require the Attorney General to perform such legal services as may be necessary for the Western & Atlantic Railroad

without compensation other than his official salary. (Ga. L. 1902, p. 97, § 1; Civil Code 1910, § 257; Code 1933, § 40-1605.)

45-15-9. Representation of state in United States Supreme Court and beyond state limits.

The Attorney General shall represent the state in all actions before the Supreme Court of the United States and perform all other services required of him by law beyond the limits of the state without extra compensation. (Ga. L. 1919, p. 134, § 2; Code 1933, § 40-1606.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6.

45-15-10. Attorney General authorized to prosecute officials, persons, firms, or corporations for violations while dealing with or for state; assistance by state court prosecuting officers.

The Attorney General, as the head of the Department of Law and the chief legal officer of the state, is authorized to prosecute in the criminal courts of this state any official, person, firm, or corporation which violates any criminal statute while dealing with or for the state or any official, employee, department, agency, board, bureau, commission, institution, or appointee thereof; and the Attorney General is authorized to call upon the district attorney or the prosecuting officer of any state court to assist in or to conduct such prosecution; and, when so requested by the Attorney General, it shall be the duty of any such district attorney or prosecuting officer of this state to assist in or to conduct such prosecution for and on behalf of the Attorney General and the state. (Ga. L. 1943, p. 284, § 6; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

JUDICIAL DECISIONS

No conflict between giving legal advice and prosecuting. — There is no conflict between the Attorney General's giving legal advice to officers or employees of the Department of Labor and prosecuting department officers or employees who violate the laws. Such a dual role is authorized. *Brown v. State*, 177 Ga. App. 284, 339 S.E.2d 332 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Cooperation in prosecution of certain persons. — The language in O.C.G.A. § 45-15-10 which empowers the Attorney General to prosecute in the criminal courts of this state any officer, person, firm or corporation for violation of any criminal

statute in dealing with or for the state, clearly indicates that the Attorney General should, where requested to do so by one of the department heads of this state, cooperate in

the prosecution of persons who are violating a criminal statute in dealing with, or refusing to deal with one of the departments of state. 1945-47 Op. Att'y Gen. p. 564.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 16, 22, 27 et seq., 36 et seq.

C.J.S. — 7A C.J.S., Attorney General, §§ 7, 10, 13.

45-15-11. Notification of Attorney General prior to presenting indictment to grand jury charging state officials.

Before an indictment charging any state official with violating subsection (b) of Code Section 45-11-4 is presented to a grand jury, the district attorney of the county where the grand jury will convene shall notify the Attorney General of such contemplated action. (Ga. L. 1943, p. 284, § 7; Ga. L. 2001, p. 487, § 4.)

The 2001 amendment, effective April 20, 2001, substituted “with violating subsection (b) of Code Section 45-11-4” for “with misfeasance or malfeasance in office” near the beginning and deleted “the rights provided in Code Section 45-11-4 shall be afforded said official and” following “grand jury,” near the middle of this Code section.

Editor’s notes. — Ga. L. 2001, 487, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Corruption Prevention Act.’”

Ga. L. 2001, 487, § 6, not codified by the General Assembly, provides that the provisions of Sections 3 and 4 of the Act shall apply to crimes committed before, on, and after April 20, 2001.

Law reviews. — For article, “Georgia Local Government Officials and the Grand Jury,” see 26 Ga. St. B.J. 50 (1989). For article, “Local Government Law,” see 53 Mercer L. Rev. 389 (2001).

JUDICIAL DECISIONS

Applicability. — O.C.G.A. § 45-15-11 was enacted pursuant to the provisions of O.C.G.A. § 45-11-4, and is applicable only to state officials who hold an office created under the Constitution or laws of this state. *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961).

O.C.G.A. § 45-15-11 uses the words “any state official,” manifestly intending that the class of persons to whom the procedural safeguards of O.C.G.A. § 45-11-4 were to be extended should be one broader than that of elected state officers, that is, that persons other than elected state officers are state officers. *Cadle v. State*, 101 Ga. App. 175, 113 S.E.2d 180 (1960).

O.C.G.A. § 45-15-11 inapplicable to official resigning position prior to indictment. — As O.C.G.A. § 45-15-11 applies to state officials, a court clerk who resigned post prior to the institution of any proceedings against the clerk is not covered. To be eligible for the provisions of O.C.G.A. § 45-15-11, a party must be a state official when an indictment is presented. *Axson v. State*, 174 Ga. App. 236, 329 S.E.2d 566 (1985).

O.C.G.A. § 45-15-11 inapplicable to superior court clerk. — Where defendant, the duly elected clerk of the superior court of Glynn county, was indicted, based on allegations that defendant had unlawfully ob-

tained or misappropriated funds belonging to the county, and defendant moved to dismiss the indictment on the ground that the state had violated defendant's rights under O.C.G.A. § 45-15-11 by failing to serve defendant with a copy of the indictment prior to its presentment to the grand jury, by not allowing defendant to be present during the grand jury proceedings, and by not allowing defendant to make a sworn statement at the conclusion of the state's presentation of its evidence to the grand jury, the trial court properly denied the motion, since the clerk of the superior court is specifically classified as a county officer under the present Georgia Constitution, and is not entitled to any of the procedures of O.C.G.A. §§ 45-11-4 and O.C.G.A. § 45-15-11. *Tostensen v. State*, 190 Ga. App. 423, 379 S.E.2d 9, cert. denied, 190 Ga. App. 899, 379 S.E.2d 9 (1989).

Whether defendant was a "state official" under O.C.G.A. § 45-15-11 depends upon defendant's duties, not upon what defendant was called, and where indictment charges that defendant was to "counsel and command" employees of the state to engage in political activity, instead of their public duties, it thus alleged, at least by clear implication, that defendant was not a mere employee but an official in charge of and having authority to command employees of the state; thus, under O.C.G.A. § 45-11-4, the defendant was entitled to the right of appearing before and being heard by the grand jury, together with defendant's witnesses. *Cadle v. State*, 101 Ga. App. 175, 113 S.E.2d 180 (1960).

Designation not creating office or official. — Although under the authority delegated to the State Revenue Commissioner of the Department of Revenue of the State of Georgia, the Commissioner may, for any reason satisfactory to himself, designate a person as "director" of some "tax unit," such designation cannot create an office or official, and the person so designated is not a state official or public official within the terms and

provisions of O.C.G.A. § 45-15-11. *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961).

Since under the Constitution and laws of this state, there is no such office, and no such official as "Director of the Motor Fuel Tax Unit of the Department of Revenue of the State of Georgia," and under the applicable rules of law, there has been no oath of office administered by the Governor, nor any commission issued by the Governor, to any such officer pursuant to O.C.G.A. §§ 45-3-30 and 45-3-31, petitioner holding such office was not entitled to the rights provided by O.C.G.A. § 45-15-11. *Jones v. Mills*, 216 Ga. 616, 118 S.E.2d 484 (1961).

Where the special presentment in a conspiracy to defraud a county case does not charge a superior court judge with malfeasance or malpractice in office, the judge was not entitled, merely by virtue of the fact that the judge occupied a high office in the state, to the special privileges accorded the holders of such offices under the provisions of O.C.G.A. § 45-15-11. *Clinkscales v. State*, 102 Ga. App. 670, 117 S.E.2d 229 (1960).

A councilman of a municipality in Georgia is simply not one of the officials covered by O.C.G.A. § 45-15-11. *Humphrey v. State*, 231 Ga. 855, 204 S.E.2d 603, cert. denied, 419 U.S. 839, 95 S. Ct. 68, 42 L. Ed. 2d 66 (1974).

Misfeasance in office. — False swearing in connection with the collection of criminal fees would fall into the category of misfeasance or malfeasance by a justice of the peace. *Fancher v. State*, 113 Ga. App. 195, 147 S.E.2d 463 (1966).

Cited in *Sweeney v. Balkcom*, 219 Ga. 292, 133 S.E.2d 10 (1963); *Wood v. State*, 219 Ga. 509, 134 S.E.2d 8 (1963); *Lowndes County v. Dasher*, 229 Ga. 289, 191 S.E.2d 82 (1972); *White v. State*, 132 Ga. App. 62, 207 S.E.2d 577 (1974); *White v. State*, 233 Ga. 593, 212 S.E.2d 777 (1975); *Orkin v. State*, 236 Ga. 176, 223 S.E.2d 61 (1976); *Mize v. State*, 152 Ga. App. 190, 262 S.E.2d 492 (1979); *Thompson v. Macon-Bibb County Hosp. Auth.*, 246 Ga. 777, 273 S.E.2d 19 (1980); *McWilliams v. State*, 177 Ga. App. 447, 339 S.E.2d 721 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 34.

C.J.S. — 7A C.J.S., Attorney General, §§ 7, 10, 13.

ALR. — Validity and construction of statutes permitting grand jury witnesses to be accompanied by counsel, 90 ALR3d 1340.

45-15-12. Attorney General authorized to prosecute civil recovery actions against persons, firms, or corporations for violations while dealing with state or officials, employees, or entities thereof.

The Attorney General, as the head of the Department of Law and the chief legal officer of the state, is authorized to file and prosecute civil recovery actions in the name of the state against any person, firm, or corporation which violates any statute while dealing with the state or any official, employee, department, agency, board, bureau, commission, institution, or authority thereof, which violation results in loss, damage, or injury to the state or to any of its departments, adjuncts, or taxpayers. (Ga. L. 1943, p. 284, § 8.)

JUDICIAL DECISIONS

An individual cannot sue in own name for the use and benefit of the state. Alexander v. Citizens & S. Nat’l Bank, 212 Ga. 295, 92 S.E.2d 16 (1956).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 22 et seq. **ALR.** — Right or duty of Attorney General to intervene in civil suits, 163 ALR 1346.
C.J.S. — 7A C.J.S., Attorney General, §§ 7, 10, 11.

45-15-13. Representation of state authorities by Attorney General.

As used in Code Sections 45-15-14 through 45-15-16, the term “state authorities” means the following instrumentalities of the state: Georgia Building Authority, Georgia Building Authority (Hospital), Georgia Building Authority (Markets), Georgia Building Authority (Penal), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, Georgia Ports Authority, State Road and Tollway Authority, Jekyll Island—State Park Authority, and Stone Mountain Memorial Association. (Ga. L. 1969, p. 484, § 1; Ga. L. 2001, p. 1251, § 2-1.)

The 2001 amendment, effective April 30, 2001, substituted “State Road and Tollway Authority” for “State Tollway Authority” near the end of this Code section.

JUDICIAL DECISIONS

Local hospital authorities, housing authorities, and development authorities are not “state authorities” of the genus defined by O.C.G.A. § 45-15-13. Gaither v. Fulton-DeKalb Hosp. Auth., 144 Ga. App. 16, 240 S.E.2d 560 (1977), rev’d on other grounds, 241 Ga. 572, 247 S.E.2d 89 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7, 18 et seq. **C.J.S.** — 7A C.J.S., Attorney General, §§ 7, 10-13.

45-15-14. Exclusive authority in law matters; employment of other counsel by state authorities; designation and assignment of assistant attorneys general to perform legal services for authorities.

The Attorney General is vested with complete and exclusive authority and jurisdiction in all matters of law relating to state authorities and no such state authority shall be authorized without the approval of the Attorney General to employ other counsel in any matter whatsoever. The Attorney General is authorized to designate and assign any assistant attorney general, deputy assistant attorney general, special deputy assistant attorney general, or attorney to perform legal services for any such state authority. (Ga. L. 1969, p. 484, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7, 8, 18 et seq. **C.J.S.** — 7A C.J.S., Attorney General, §§ 7, 10-12. 81A C.J.S., States, § 315.

45-15-15. Attorney General to submit statement to state authority for legal services; contents; advance approval of state authority director.

From time to time the Attorney General shall submit to the state authority requesting legal services a statement of the expenses of such legal services incurred by the Department of Law, such statements to include the names of the assistant attorneys general, deputy assistant attorneys general, special deputy assistant attorneys general, or attorneys performing such services; the items of legal services performed; and the costs thereof. The state authority is authorized to reimburse the Department of Law for such services and expenses; provided, however, that the amount of such services and expenses shall have the advance approval of the director of the state authority requesting such services. (Ga. L. 1969, p. 484, § 4; Ga. L. 2002, p. 462, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Periodic payments for legal services. — The Stone Mountain Memorial Association may pay the State Law Department a fixed monthly fee for the legal services which it receives from the Department of Law. 1971 Op. Att'y Gen. No. 71-143.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6. **C.J.S.** — 7A C.J.S., Attorney General, § 6.

45-15-16. State authority to reimburse department for legal services.

When the Attorney General shall assign any assistant attorney general, deputy assistant attorney general, special deputy assistant attorney general, or attorney to perform specific legal services requested by any state authority or legal service requested in connection with the validation of any bonds issued or to be issued by any state authority, the state authority requesting such services shall reimburse the Department of Law for such services as provided in Code Section 45-15-15. (Ga. L. 1969, p. 484, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 5, 6, 18 et seq. **C.J.S.** — 7A C.J.S., Attorney General, § 6.

45-15-17. Power to conduct investigations generally; issuance and enforcement of subpoenas.

(a) The Attorney General, as head of the Department of Law and as chief legal officer of the state, is authorized to institute and conduct investigations at any time into the affairs of the state; or of any department, board, bureau, commission, institution, authority, instrumentality, retirement system, or other agency of the state; or into the affairs of any person or organization to the extent that such person or organization shall have or shall have had any dealings with the state or any department, board, bureau, commission, institution, authority, instrumentality, retirement system, or other agency of the state.

(b) For the purpose of conducting any investigation as provided in this Code section, the Attorney General shall have the power to administer oaths; to call any party to testify under oath at such investigations; to require the attendance of witnesses and the production of books, records, and papers; and to take the depositions of witnesses. For such purposes the Attorney General is authorized to issue a subpoena for any witness or a subpoena to compel the production of any books, records, or papers.

(c) In case of refusal to obey a subpoena issued under this Code section to any person and upon application by the Attorney General, the superior court in whose jurisdiction the witness is to appear or in which the books, records, or papers are to be produced may issue to that person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(d) Nothing contained in this Code section shall authorize the Attorney General to commence or carry on any investigation or to issue any subpoenas to anyone for the purpose of investigating any member of the General Assembly while the General Assembly is in any regular or called session. (Ga. L. 1943, p. 284, § 5; Ga. L. 1975, p. 883, § 1; Ga. L. 1982, p. 3, § 45.)

JUDICIAL DECISIONS

Legality of subpoenas. — A court of equity has jurisdiction to inquire into the legality of subpoenas issued under O.C.G.A. § 45-15-17. *Williams v. Bolton*, 227 Ga. 671, 182 S.E.2d 440 (1971).

Enjoinment of enforcement of unauthorized subpoenas. — Where subpoenas are not in accordance with the law authorizing the issuance of subpoenas by the Attorney General, a trial judge errs in refusing to enjoin the Attorney General from proceeding with an investigation under such subpoenas. *Williams v. Bolton*, 227 Ga. 671, 182 S.E.2d 440 (1971).

Where subpoenas issued by the Attorney General do not show that the investigation concerned any department, agency, board, bureau, commission, institution or authority of the state, but state that the investigation concerns the activities of an employee of a particular county, that employee cannot be legally required to obey the subpoenas. *Williams v. Bolton*, 227 Ga. 671, 182 S.E.2d 440 (1971).

Cited in *Claxton v. Bolton*, 223 Ga. 818, 158 S.E.2d 676 (1967); *Dean v. Bolton*, 235 Ga. 544, 221 S.E.2d 20 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 7, 22, 32, 34, 37.

C.J.S. — 7A C.J.S., Attorney General, § 7.

45-15-18. Governor may direct Attorney General to conduct investigations of departments, state officials or employees or entities dealing with state; filing and prosecution of actions; appointment of special attorney general.

The Governor may at any time direct the Attorney General to conduct an investigation into the affairs of any department of the state or into the official conduct of any state official or employee or into the affairs of any person, firm, or corporation dealing with the state. The Governor may at any time direct the Attorney General to file and prosecute criminal actions and civil recovery actions in the name of the state against any official, person, firm, or corporation which violates any criminal or civil statute while dealing with or for the state, which violation results in loss, damage, or injury to the state. In the event the Attorney General refuses to take or file such action within a reasonable time after having been directed by the Governor to do so, the Governor is authorized to appoint a special attorney general to carry out the requirements of law provided in this Code section. (Ga. L. 1943, p. 284, § 9.)

JUDICIAL DECISIONS

Cited in *Dean v. Bolton*, 235 Ga. 544, 221 S.E.2d 20 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 10, 16, 17, 36.

C.J.S. — 7A C.J.S., Attorney General, § 7.

ALR. — Right or duty of Attorney General to intervene in civil suits, 163 ALR 1346.

45-15-19. Governor and General Assembly authorized to make investigations; designation of district attorney to act for state in action against Attorney General.

In addition to the power conferred upon the Attorney General in this article, the Governor or the General Assembly is authorized likewise to make investigations, including investigations of the Department of Law or the offices of the Attorney General or any agency under his control, and all authority and rights granted to the Governor and the General Assembly shall be as complete and absolute as those granted to the Attorney General. In any civil or criminal action against the Attorney General, the Governor shall designate a district attorney who shall be authorized, in such case, to act for the state. (Ga. L. 1943, p. 284, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 3, 10. 63C Am. Jur. 2d, Public Officers and Employees, §§ 369 et seq., 410.

C.J.S. — 67 C.J.S., Officers, § 68.

45-15-20. Charge, demand, or receipt by Attorney General of fee, perquisite, or compensation other than salary in case where state interested.

If the Attorney General shall charge, demand, or receive any fee, perquisite, or compensation, other than his salary, in any case in which the state shall be a party or in any manner interested, he shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than two nor more than 20 years, shall be removed from office, and shall be forever disqualified from holding any office in this state. (Ga. L. 1878-79, p. 157, §§ 1, 2; Code 1882, § 4508a; Penal Code 1895, § 300; Penal Code 1910, § 304; Code 1933, § 40-9901.)

ARTICLE 2

DEPARTMENT OF LAW

45-15-30. Created; assistants, deputies, and other support personnel; determination of duties, salaries, and effect promotions; limitation on private practice of law; disclosure requirement for assistant attorney general representing criminal defendant.

There is created a Department of Law with the Attorney General at the head thereof and with such numbers of deputy attorneys general, assistant attorneys general, special assistant attorneys general, other attorneys, paraprofessional personnel, and other employees or independent contractors as the Attorney General shall deem necessary to carry out the functions of the Attorney General and the Department of Law. The Attorney General is authorized to determine the title and to change the title of any attorney or other employee of the Department of Law or any attorney at law under independent contract to the Department of Law in order to define the duties and responsibilities of any attorney or other employee of the said department and to establish salaries and effect promotions of any such attorney or other employee of the said department, except that those positions in the department which are within the classified service of the state merit system on April 18, 1975, shall be covered by the state merit system according to procedures prescribed by the State Personnel Board. Neither the Attorney General nor any other attorney at law employed full time by the Department of Law shall engage in the private practice of law during his term of appointment. Attorneys at law under independent contract to the Department of Law may engage in the private practice of law even though they may have been appointed or designated either specially or generally as assistant attorneys general or attorneys. Notwithstanding that any attorney at law under independent contract to the Department of Law has been appointed or designated either specially or generally as an assistant attorney general and thus is identified with the State of Georgia as its representative for cases arising within the scope of that appointment or designation, representation of a defendant in criminal proceedings by that assistant attorney general shall not constitute a conflict of interest if that assistant attorney general provides written disclosure of such appointment or designation to the defendant prior to accepting employment by that defendant or, when a court has appointed an assistant attorney general to represent an indigent criminal defendant, disclosures to the defendant and to the court, to be reflected in the record of that court, such appointment or designation as assistant attorney general. (Ga. L. 1943, p. 284, § 2; Ga. L. 1947, p. 673, § 1; Ga. L. 1961, p. 131, § 1; Ga. L. 1966, p. 43, § 1; Ga. L. 1975, p. 879, § 1; Ga. L. 1984, p. 1359, § 1.)

Cross references. — Creation of State Library as a division of Department of Law, § 50-11-2.

JUDICIAL DECISIONS

Representing accused in federal court. — Although O.C.G.A. § 45-15-30 is silent on the point, if an independent contractor assisting the attorney general can represent an accused in state court, the independent contractor can also represent the accused in federal court, in a proceeding challenging

the validity of conviction. *Waters v. Kemp*, 845 F.2d 260 (11th Cir. 1988).

Cited in *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983); *State v. Redd*, 243 Ga. App. 809, 534 S.E.2d 473 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Representation of criminal defendants. — Effective July 1, 1984, the terms of all appointments of special assistants by this office will no longer prohibit special assistants from representing defendants in criminal cases so long as O.C.G.A. § 45-15-30 is complied with, except in the following instances: (1) criminal cases in which the death penalty may be imposed; (2) criminal proceedings being handled by the Department of Law;

and (3) any criminal proceeding not being handled by this office and in which the complaining party is a state agency and that state agency is being represented to any extent by the special assistant through appointment by the Attorney General to do legal work for or in behalf of that agency. 1984 Op. Att’y Gen. No. U84-27, superseding 1982 Op. Att’y Gen. No. U82-45.

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney General, §§ 4, 7.

ALR. — Validity, under state law, of appointment of independent special prosecu-

tor to handle political or controversial prosecutions or investigations of persons other than regular prosecutor, 84 ALR3d 29.

45-15-31. Appointment, compensation, and removal of assistant and deputy attorneys general and law assistants.

(a) All assistant attorneys general, deputy assistant attorneys general, and law assistants shall be appointed by the Attorney General for such periods of time as he deems advisable. The compensation of all assistant attorneys general, deputy assistant attorneys general, law assistants, and other employees of the Department of Law shall be established by the Attorney General, except that those employees under the merit system shall be compensated according to the laws and rules and regulations of said system. Any assistant attorney general, deputy assistant attorney general, law assistant, or other employee not under the merit system may be removed by the Attorney General.

(b) The term “assistant attorney general,” wherever it may appear in the laws of this state, shall be understood to include the term “deputy attorney general” so that a deputy attorney general, when duly appointed by the Attorney General, may perform any duty otherwise prescribed by law or

regulation to be performed by an assistant attorney general. (Ga. L. 1943, p. 284, § 3; Ga. L. 1950, p. 225, § 1; Ga. L. 1961, p. 131, § 3; Ga. L. 1966, p. 43, § 2; Ga. L. 1967, p. 102, § 1; Ga. L. 1975, p. 879, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6, 13 et seq., 40. **C.J.S.** — 7A C.J.S., Attorney General, §§ 4, 6.

45-15-32. Employment of clerical assistants for department.

The Attorney General as the head of the Department of Law is authorized and directed to employ such clerical assistants as may from time to time be needed. (Ga. L. 1931, p. 7, § 93; Code 1933, § 40-1611.)

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney General, §§ 4, 7.

45-15-33. Employees of department not to receive remuneration of any kind or reimbursement other than provided by article; exception.

Except as provided in this article, no employee of the Department of Law shall be entitled to or authorized to receive any salary, fee, compensation, or other remuneration of any type, nor shall he be entitled to the reimbursement of expenses from any other state department, agency, commission, board, authority, bureau, or any other legislative, judicial, or executive body of state government; provided, however, that nothing contained in this Code section shall apply to or be construed to exclude or prohibit the payments provided for in paragraph (4) of subsection (a) of Code Section 32-2-2. (Ga. L. 1967, p. 102, § 2.)

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney General, §§ 4, 6.

45-15-34. Department as exclusive authority for executive branch in law matters.

The Department of Law is vested with complete and exclusive authority and jurisdiction in all matters of law relating to the executive branch of the government and every department, office, institution, commission, committee, board, and other agency thereof. Every department, office, institution, commission, committee, board, and other agency of the state government is prohibited from employing counsel in any manner whatsoever

unless otherwise specifically authorized by law. (Ga. L. 1943, p. 284, § 4; Ga. L. 1966, p. 43, § 3.)

JUDICIAL DECISIONS

O.C.G.A. § 45-15-34 does not prohibit the Attorney General from accepting legal services from a county attorney for which services the state is under no obligation to pay. State Hwy. Dep't v. Sumner, 102 Ga. App. 1, 115 S.E.2d 787 (1960).

County attorney could act as agent for department. — Even if the county attorney was not as an attorney at law authorized to act for the State Highway Department (now Department of Transportation), the county attorney was at least one who in fact purported to act as agent for the department in filing the appeal. While it is true that written authority to so act was not filed with the appeal, the county attorney's act was ratified by the Attorney General and this dispensed with the necessity of the presence of the written authority. State Hwy. Dep't v. Sumner, 102 Ga. App. 1, 115 S.E.2d 787 (1960).

County attorney may act with actual and implied authority. — Where the condemnation proceeding could have been instituted in the name of the county itself, and in fact, the proceeding was brought by the county in the name of the State Highway Department (now Department of Transportation), and the county attorney's assistance in the case in other respects was never objected to or questioned, the county attorney had author-

ity, actual as well as implied, to sign the appeal as attorney for the department. State Hwy. Dep't v. Sumner, 102 Ga. App. 1, 115 S.E.2d 787 (1960).

Representation Before Health Planning Review Board. — The assistant Attorney General fulfilled a constitutionally and statutorily mandated dual role in representing both the State Health Planning and Development Agency and the Health Planning Review Board, but this dual role as prosecutor and legal advisor to the Review Board did not taint the opportunity of each party to present its case in full before the Review Board. North Fulton Community Hosp. v. State Health Planning & Dev. Agency, 168 Ga. App. 801, 310 S.E.2d 764 (1983).

No conflict between giving legal advice and prosecuting. — There is no conflict between the Attorney General's giving legal advice to officers or employees of the Department of Labor and prosecuting department officers or employees who violate the laws. Such a dual role is authorized. Brown v. State, 177 Ga. App. 284, 339 S.E.2d 332 (1985).

Cited in State Hwy. Dep't v. Smith, 120 Ga. App. 529, 171 S.E.2d 575 (1969); Doe v. Bolton, 319 F. Supp. 1048 (N.D. Ga. 1970); Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-15-34 vests exclusive jurisdiction over all legal matters in the Attorney General, as head of the Department of Law. 1960-61 Op. Att'y Gen. p. 249.

O.C.G.A. § 45-15-34 does not prohibit the Attorney General from accepting legal services from a county attorney for which the state is under no obligation to pay. 1960-61 Op. Att'y Gen. p. 249.

Employment of private counsel. — O.C.G.A. § 45-15-4 when read in conjunction with the provisions of O.C.G.A. § 45-15-34 which unequivocally provide that the State Law Department shall have complete and exclusive authority as to legal

matters pertaining to state agencies, indicates that the legislative intent was that private counsel should represent state agencies only on those rare occasions when the Attorney General deems such representation to be necessary; the use of the term "employ" in O.C.G.A. § 45-15-4 does not indicate a willingness on the part of the General Assembly to authorize a state agency to be represented by private counsel of its choice who offer to do so at no expense to the agency. 1976 Op. Att'y Gen. No. 76-93.

Attorneys employed by state agencies. — Although state agencies may employ persons with legal training and experience to serve

as administrative legal service officers, those persons may not provide legal advice or representation to the agency, and no attorney-client relationship or privilege arises between the legal services officer and other agency officers or employees, or the agency itself. 1995 Op. Att'y Gen. No. 95-1.

University of Georgia is not authorized to employ private attorneys to collect delinquent student loan funds, but it may turn over accounts to a collection agency for handling; the university should not advance any court costs for the collection of delin-

quent accounts; the method, means and expense for collecting delinquent accounts should be the responsibility of the collection agency and not the University of Georgia. 1962 Op. Att'y Gen. p. 593.

Exclusive legal representative of Department of Labor. — The Department of Labor may not employ its own general counsel or otherwise provide itself with legal advice or representation other than through the Attorney General. 1984 Op. Att'y Gen. No. 84-48.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 18 et seq.

45-15-35. Power of Governor to direct institution of proceedings and litigation by department.

The Governor shall have the power to direct the Department of Law, through the Attorney General as head thereof, to institute and prosecute in the name of the state such matters, proceedings, and litigations as he shall deem to be in the best interest of the people of the state. (Ga. L. 1931, p. 7, § 92; Code 1933, § 40-1610.)

Cross references. — Duty of Governor to provide for defense of actions against state or other actions involving claim inconsistent

with state's sovereignty, jurisdiction, or rights, § 45-12-26.

JUDICIAL DECISIONS

An individual cannot sue personally for the use and benefit of the state. Alexander v.

Citizens & S. Nat'l Bank, 212 Ga. 295, 92 S.E.2d 16 (1956).

OPINIONS OF THE ATTORNEY GENERAL

Action to enjoin nuisance. — O.C.G.A. § 45-15-35 is sufficient to authorize the Governor to authorize the Law Department

through the Attorney General to file a suit to restrain a public nuisance. 1968 Op. Att'y Gen. No. 68-442.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 1, 10, 11.

C.J.S. — 7A C.J.S., Attorney General, §§ 7, 9.

45-15-36. Reimbursement of department by other state agencies for litigation expenses; submission to agency of statement of expenses.

(a) When the Attorney General shall undertake the trial or preparation for trial of any action on behalf of any state department, agency, commission, board, authority, bureau, or any other legislative, judicial, or executive body of the state, such state agency involved is authorized and directed to reimburse the Department of Law for actual expenses incurred for court costs, filing costs, witness fees, costs of reporting and preparing transcripts of records, costs for depositions, interrogatories, and other methods of discovery, and any other expenses incurred for such services, except salaries, expenses, and subsistence allowances paid regular employees of the Department of Law.

(b) From time to time the Attorney General shall submit to the state agency involved a statement of the expenses of such trial or trial preparation incurred by the Department of Law, such statements to include detailed, itemized statements of the costs thereof as contemplated by this Code section; and, notwithstanding any other provision of law, the state agency involved is authorized and directed to reimburse the Department of Law for such expenses from funds appropriated to or available to such state agency. (Ga. L. 1967, p. 104, §§ 1, 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 5, 6.

C.J.S. — 7A C.J.S., Attorney General, § 6.

45-15-37. Reimbursement of department by state retirement systems or Board of Workers' Compensation for services; "state retirement systems" defined; statement of expenses; advance approval of services.

(a) As used in this Code section, the term "state retirement systems" means the following retirement systems: Employees' Retirement System of Georgia, Teachers Retirement System of Georgia, Public School Employees Retirement System, and Trial Judges and Solicitors Retirement Fund.

(b) When the Attorney General shall assign any assistant attorney general, deputy assistant attorney general, special deputy assistant attorney general, or attorney to perform specific legal services requested by the State Board of Workers' Compensation or by any state retirement system, the State Board of Workers' Compensation or the state retirement system requesting such services shall reimburse the Department of Law for such services, as provided in subsection (c) of this Code section.

(c) From time to time the Attorney General shall submit to the State Board of Workers' Compensation or to the state retirement systems

requesting legal services a statement of the expenses of such legal services incurred by the Department of Law, such statements to include the names of the assistant attorneys general, deputy assistant attorneys general, special deputy assistant attorneys general, or attorneys performing such services; the items of legal services performed; and the costs thereof. The State Board of Workers' Compensation and the state retirement systems are authorized to reimburse the Department of Law for such services and expenses; provided, however, that the amount of such services and expenses shall have the advance approval of the director of the State Board of Workers' Compensation and the state retirement systems requesting such services. (Ga. L. 1973, p. 810, §§ 1-3; Ga. L. 1990, p. 8, § 45.)

RESEARCH REFERENCES

C.J.S. — 7A C.J.S., Attorney General, § 6.

ARTICLE 3

REMOVAL OF ATTORNEY GENERAL FOR INCAPACITY

45-15-50 through 45-15-57.

Repealed by Ga. L. 1983, p. 1207, § 3, effective July 1, 1983.

Editor's notes. — These Code sections were based on Ga. L. 1975, p. 863, §§ 1-8.

ARTICLE 4

COUNSEL FOR PUBLIC OFFICIALS AND AGENCIES

45-15-70. Governor authorized to provide counsel for public officials and agencies; fees and costs to be paid by state.

(a) When any action or proceeding is filed in any court of this state, in any federal court, or with any professional licensing board, disciplinary board or commission, or other similar body, which action or proceeding is against a public officer, public official, a state board or bureau, or against any member of such board or bureau and which action or proceeding seeks relief against such officer, official, board, or bureau in the administration of his or its duties, and when the state compensates or appropriates or allocates moneys to such officer, official, board, or bureau which is used in the administration of his or its duties, and this shall include county registrars, and when no regular counsel is provided within a reasonable time for such officer, official, board, bureau, or county registrar by the Attorney General, then the Governor may direct the Attorney General to provide such counsel. In the event the Attorney General refuses to provide such counsel within a reasonable time after having been directed by the

Governor to do so, the Governor is authorized to designate legal counsel in such case for such officer, official, board, or bureau, or any member of such board or bureau, or county registrar.

(b) Whenever the Governor designates counsel in any action specified in subsection (a) of this Code section, any fees or expenses paid to or on account of such counsel and any court costs may be paid by the state. (Ga. L. 1959, p. 18, §§ 1, 2; Ga. L. 1975, p. 878, § 1; Ga. L. 1982, p. 3, § 45; Ga. L. 1987, p. 993, § 3.)

JUDICIAL DECISIONS

O.C.G.A. § 45-15-70 does not prohibit the representation by the Attorney General of legislators in legal actions which arise out of their official duties as legislators. *Coggin v. Davey*, 233 Ga. 407, 211 S.E.2d 708 (1975).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-15-70 authorizes appointment by the Governor of counsel to defend district attorney in certain civil actions. 1974 Op. Att'y Gen. No. U74-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 18 et seq.
63C Am. Jur. 2d, Public Officers and Employees, § 406 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 122, 161, 175, 176, 178, 258.

CHAPTER 16

CORONERS

Article 1		Sec.	
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45-16-1.	Election, commission, removal; qualifications; affidavit of qualification.	45-16-25.	Duties of coroner or county medical examiner upon receipt of notice of suspicious or unusual death; authority to embalm body; identification; inventory and disposition of deceased's property; use of deceased's property for evidence.
45-16-2.	Appointment of coroners where coroners not elected; filling vacancies.		Remains of deceased to be released to next of kin within 24 hours; exception in cases where foul play suspected.
45-16-3.	Oath.		Assumption of duties by medical examiner in absence of coroner or deputy coroner; signing of death certificates.
45-16-4.	Bond generally; liability for moneys collected or failing to do duties.	45-16-25.1.	When inquest to be held; special situations; coroner's fee; issuance of subpoenas for books, records, or papers; cost of copying; limited disclosure of photographs.
45-16-5.	Additional bond when acting for sheriff.	45-16-26.	Medical examination of unexpected or unexplained death of person under seven years of age.
45-16-6.	Participation in training course.		Performance of autopsy when not required under Code Section 45-16-24.
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45-16-9.	Fees.		Authorization of removal of body for convenience of examination; investigation of premises before removal.
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45-16-11.	Compensation of county coroners; increases; calculation; supplements; expenses.	45-16-27.1.	Coroner to make inquest upon completion of examination and verification.
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CORONERS

Sec.		Sec.	
45-16-35.	Coroner to require material witnesses to enter into recognizance; petition for issuance of warrant for arrest of suspected person.	45-16-47.	Penalty for violation of article.
45-16-36.	Impaneling of jury to hold inquest; compensation of jurors.	45-16-48.	Authorization of coroner's employment of court reporter.
45-16-37.	Jury not to be impaneled until investigation complete; jury not required to view body.	45-16-49.	Fees.
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45-16-44.	Disposition of bodies after examination and inquest; payment of burial expenses from deceased's estate.	45-16-64.	Council officers; quorum; record keeping; annual reports.
45-16-45.	Authority of coroners and medical examiners to disinter bodies.	45-16-65.	Powers and duties of council generally.
45-16-46.	Obtaining of blood sample where person unable to con-	45-16-66.	Annual training requirement for certified coroners; fees.
		45-16-67.	Actions to restrain violations of this article.
		Article 4	
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		45-16-80.	Abolition of office of coroner; qualifications, appointment, compensation, powers, and duties of medical examiners.

Cross references. — Disposition of dead bodies, disturbing of graves, etc., Ch. 21, T. 31.

Editor's notes. — Ga. L. 1985, p. 843, which affected various Code sections throughout this chapter, specifically provided (in § 11 of the Act) for the repeal of House Bill 255, which passed during the 1985 session and contained provisions affecting various Code sections in this chapter. House Bill 255 was also vetoed by the Governor on April 4, 1985 (Veto # 1).

By resolution (Ga. L. 1982, p. 1345), the General Assembly designated the "Georgia Coroners Manual" as the official operating manual for coroners in the State of Georgia, authorized and directed all coroners in the state to follow the instructions, procedures, and techniques detailed in the manual, and instructed the Secretary of the Senate to forward a copy of the resolution to each coroner in the state.

ARTICLE 1

GENERAL PROVISIONS

45-16-1. Election, commission, removal; qualifications; affidavit of qualification.

(a) Coroners are elected, commissioned, and removed as are clerks of the superior courts; and coroners shall hold their offices for four years.

(b)(1) No person shall be eligible to offer for election to or to hold the office of coroner unless he or she:

(A) Is a citizen of the United States;

(B) Is a resident of the county in which he or she seeks the office of coroner for at least two years prior to his or her qualifying for the election to the office and remains a resident of such county during his or her term of office;

(C) Is a registered voter;

(D) Has attained the age of 25 years prior to the date of the general primary in the year he or she qualifies for election to the office;

(E) Has obtained a high school diploma or its recognized equivalent. This subparagraph shall not apply to any person serving as a coroner on July 1, 1980;

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States; and

(G) Has successfully completed the next scheduled class no longer than 180 days after such person's election or appointment a basic training course provided by the Georgia Police Academy, but the affidavit required by paragraph (2) of this subsection shall not be required to affirm that the requirements of this subparagraph have been met at the time of qualifying for the office of coroner.

(2) Each person offering his or her candidacy for the office of coroner shall file an affidavit with the officer before whom such person has qualified to seek the office of coroner prior to or at the time for qualifying, which affidavit shall affirm that he or she meets all of the qualifications required pursuant to paragraph (1) of this subsection.

(c) Notwithstanding any other provision of law, any person holding office as the mayor of a municipality with a population of 5,000 or less according to the United States decennial census of 1980 or any future such census is specifically authorized to serve simultaneously as coroner; and any person holding the office of coroner is specifically authorized to serve

simultaneously as mayor of a municipality with a population of 5,000 or less according to the United States decennial census of 1980 or any future such census. (Orig. Code 1863, § 559; Code 1868, § 623; Code 1873, § 582; Code 1882, § 582; Civil Code 1895, § 491; Civil Code 1910, § 609; Ga. L. 1914, p. 43, § 1; Code 1933, § 21-101; Ga. L. 1985, p. 843, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1987, p. 630, § 1; Ga. L. 1988, p. 13, § 45; Ga. L. 1989, p. 1091, § 6; Ga. L. 1990, p. 1735, § 2; Ga. L. 1992, p. 1436, § 1; Ga. L. 1999, p. 869, § 1.)

Cross references. — Clerks of superior courts generally, § 15-6-50 et seq.

JUDICIAL DECISIONS

Cited in *Williams v. Richmond County*, 241 Ga. 89, 243 S.E.2d 55 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 2. **C.J.S.** — 18 C.J.S., Coroners, § 3.

45-16-2. Appointment of coroners where coroners not elected; filling vacancies.

(a) Whenever an election fails to fill the office of coroner, the judge of the probate court shall appoint a person to serve as the coroner until a successor is duly elected in a special election which shall be held at the time of the next general election to serve out the remainder of the unexpired term of office.

(b) In the event a vacancy occurs in the office of coroner, the judge of the probate court shall appoint a person to serve out the unexpired term of office and until his successor shall be duly elected and qualified.

(c) No appointment or election under subsection (a) or (b) of this Code section shall be of any effect until proper bond and security is given and the oath of office is taken. (Orig. Code 1863, § 560; Code 1868, § 624; Code 1873, § 583; Code 1882, § 583; Civil Code 1895, § 492; Civil Code 1910, § 610; Code 1933, § 21-102; Ga. L. 1988, p. 586, § 4.)

Editor's notes. — Ga. L. 1988, p. 586, § 7, not codified by the General Assembly, provides that the amendment to this Code section is applicable to any vacancy occurring on or after March 30, 1988.

JUDICIAL DECISIONS

Cited in *Williams v. Richmond County*, 241 Ga. 89, 243 S.E.2d 55 (1978).

RESEARCH REFERENCES

C.J.S. — 18 C.J.S., Coroners, § 3.

45-16-3. Oath.

Before beginning the duties of the office of coroner, a coroner shall take the oath required of all civil officers and shall take the following oath:

“I swear that I will well and truly serve the State of Georgia in said office and faithfully and truly execute all writs and precepts to me directed or which I may lawfully execute, when placed in my charge, and return the same according to the best of my knowledge, skill, and judgment; that I will in no case knowingly use or exercise my office illegally, corruptly, or unjustly and that I will not, under any pretense, take, accept, or enjoy any fee or reward pertaining to my office other than such as are allowed by law; but that I will, in all things touching the duties of my office, demean myself honestly, fairly, and impartially according to the best of my ability, so help me God.”

(Laws 1823, Cobb’s 1851 Digest, p. 536; Code 1863, § 561; Code 1868, § 625; Code 1873, § 584; Code 1882, § 584; Civil Code 1895, § 493; Civil Code 1910, § 611; Code 1933, § 21-103.)

45-16-4. Bond generally; liability for moneys collected or failing to do duties.

A coroner shall give bond and surety in the sum of \$12,500.00 at the same time as he takes the oath provided for in Code Section 45-16-3. He is liable for retaining moneys collected or for otherwise failing to do his duty as sheriffs are and is subject to the same proceedings. (Laws 1823, Cobb’s 1851 Digest, p. 539; Code 1863, § 562; Code 1868, § 626; Code 1873, § 585; Code 1882, § 585; Civil Code 1895, § 494; Civil Code 1910, § 612; Code 1933, § 21-104; Ga. L. 1985, p. 843, § 2.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 2. **C.J.S.** — 18 C.J.S., Coroners, §§ 3, 4, 32.

45-16-5. Additional bond when acting for sheriff.

When a coroner is required to act in the place of a sheriff, generally or specially, the judge of the probate court may require of him an additional bond in such sum and with such sureties as the judge, in his discretion, may think sufficient to meet the contingency. (Orig. Code 1863, § 563; Code

1868, § 627; Code 1873, § 586; Code 1882, § 586; Civil Code 1895, § 495; Civil Code 1910, § 613; Code 1933, § 21-107.)

Cross references. — Duty of coroner to act as keeper of county jail when sheriff is imprisoned or absent from county, § 42-4-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 2. **C.J.S.** — 18 C.J.S., Coroners, §§ 3, 4, 32.

45-16-6. Participation in training course.

During every calendar year they are in office, every coroner and deputy coroner shall be required, as a condition of continuing to serve as coroner, to take a training course approved by the Georgia Coroner's Training Council pursuant to Code Section 45-16-66. Any coroner or deputy coroner taking the approved training course provided by the Georgia Police Academy shall receive the same expense allowance per day as that received by a member of the General Assembly, plus reimbursement of actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile and registration fees for such training course. Such expense allowance and reimbursements shall be paid by the county governing authority from county funds. In the event, however, that a coroner or deputy is prevented in any calendar year from taking such training by sickness or other providential cause, the requirement of training for that year may be waived by the Georgia Coroner's Training Council. (Code 1933, § 21-108, enacted by Ga. L. 1980, p. 543, § 3; Code 1981, § 45-16-8; Code 1981, § 45-16-6, enacted by Ga. L. 1985, p. 843, § 3; Ga. L. 1988, p. 1539, § 1; Ga. L. 1990, p. 333, § 1; Ga. L. 1992, p. 1436, § 2; Ga. L. 1994, p. 356, § 1.)

Cross references. — Annual training requirement for certified coroners, § 45-16-66.

OPINIONS OF THE ATTORNEY GENERAL

Number of training hours required. — O.C.G.A. §§ 45-16-6 and 45-16-66(a) should be construed as requiring coroners in Georgia to take 32 hours of training per year, beginning on July 1, 1990; legislation which purported to require 24 hours of training, effective January 1, 1991, was repealed by a subsequent enactment of the General Assembly during the same session. 1990 Op. Att'y Gen. No. 90-41.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 3. **C.J.S.** — 18 C.J.S., Coroners, § 27 et seq.

45-16-7. Appointment of deputy coroners; oath, bond, fees, powers, and qualifications.

(a) As soon as practicable after July 1, 1980, and at the beginning of each term of the coroner thereafter, the coroner of each county shall appoint a deputy coroner or coroners as provided in this Code section. A deputy coroner shall be appointed for each county, and one or more additional deputy coroners may be appointed for any county, in the discretion of the coroner. Each deputy coroner shall serve at the pleasure of the coroner and may be replaced by the coroner at any time. Each deputy coroner shall take the same oath, give the same bond, be entitled to the same fees, and have the same powers as the coroner; but a deputy coroner shall act as coroner only when the coroner is himself unable to act.

(b) No person shall be eligible to hold the office of deputy coroner unless he or she holds a high school diploma or its recognized equivalent. Any deputy coroner who is in office on July 1, 1980, however, shall without limitation be eligible to serve as deputy coroner at any time after said date without regard to whether he or she meets the requirements of this subsection.

(c) Notwithstanding any law to the contrary, there shall be appointed only one deputy coroner, and, on and after July 1, 1999, there shall only be one deputy coroner in each such county unless otherwise approved by the local governing authority of the county. (Code 1933, §§ 21-102.1, 21-108, enacted by Ga. L. 1980, p. 543, §§ 1, 3; Code 1981, §§ 45-16-7, 45-16-8; Code 1981, § 45-16-7, enacted by Ga. L. 1985, p. 843, § 3; Ga. L. 1999, p. 869, § 2.)

Editor's notes. — The 1985 amendment, effective April 3, 1985, in effect redesignated former § 45-16-7 as present subsection (a) of this Code section, without any change of

language, and redesignated former § 45-16-8(a) as subsection (b) of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Prohibited employment. — An individual may not be employed by the Georgia Bureau of Investigation Division of Forensic Sci-

ences at the same time that he is a county deputy coroner. 1997 Op. Att'y Gen. No. 97-21.

45-16-8. Service of process when sheriff disqualified.

If any person makes an affidavit stating (1) that a sheriff is disqualified from acting in any proceeding, which disqualification was not apparent at the outset of the proceeding, or (2) that a sheriff or his deputy refuses to serve a writ or other process, then the clerk of the court from which the process issues shall place the process in the hands of the coroner for execution. The clerk may compel the sheriff to return the writ or other process to the clerk's office in order to allow for execution by the coroner.

(Orig. Code 1863, § 565; Code 1868, § 629; Code 1873, § 588; Code 1882, § 588; Civil Code 1895, § 496; Civil Code 1910, § 614; Code 1933, § 21-106; Code 1981, § 45-16-9; Code 1981, § 45-16-8, enacted by Ga. L. 1985, p. 843, § 3.)

Editor's notes. — The 1985 amendment, effective April 3, 1985, in effect renumbered former § 45-16-9 as this Code section, with-

out any change of language. For present provisions similar to former § 45-16-8, see §§ 45-16-6 and 45-16-7(b).

JUDICIAL DECISIONS

Sheriffs are disqualified to perform their official duties in cases in which they have an interest. *Abrams v. Abrams*, 239 Ga. 866, 239 S.E.2d 33 (1977).

Service by de facto coroner. — Process directed to one who is coroner de facto, and executed by the coroner, is good. *Gunby, Daniel & Co. v. Welcher & Carter*, 20 Ga. 336 (1856).

Improper levy dismissed on motion. — Where an execution is not directed to the coroner, and no affidavit was filed as required by O.C.G.A. § 45-16-8, a levy by the coroner should be dismissed on motion. *Blance & McGarough v. Mize*, 72 Ga. 96 (1883); *Baldwin v. Hudson*, 103 Ga. 96, 29 S.E. 601 (1897).

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-16-8 does not give the coroner power to arrest the sheriff in criminal matters. 1973 Op. Att'y Gen. No. 73-93.

45-16-9. Fees.

(a) When performing the duties of a sheriff, the coroner's fees are the same as a sheriff's.

(b) This Code section shall not be construed to repeal or preempt any local Act or general Act of local application which places any coroner upon an annual salary or authorizes any coroner to receive fees in excess of those specified in this Code section. (Laws 1792, Cobb's 1851 Digest, p. 352; Ga. L. 1859, p. 25, § 1; Code 1863, § 3625; Code 1868, § 3650; Code 1873, § 3701; Ga. L. 1878-79, p. 73, § 1; Code 1882, § 3701; Penal Code 1895, § 1112; Penal Code 1910, § 1141; Code 1933, § 21-105; Ga. L. 1953, Jan.-Feb. Sess., p. 210, § 1; Ga. L. 1980, p. 543, § 2; Code 1981, § 45-16-6; Code 1981, § 45-16-9, enacted by Ga. L. 1985, p. 843, § 3.)

Cross references. — Fees for services of sheriff, § 15-16-21.

Editor's notes. — The 1985 amendment, effective April 3, 1985, in effect renumbered

former § 45-16-6 as this Code section. For present provisions of former § 45-16-9, see § 45-16-8.

JUDICIAL DECISIONS

A coroner who personally summons a jury to hold an inquest is not entitled to any fee for such service. *Davis v. County of Bibb*, 116

Ga. 23, 42 S.E. 403 (1902).

Burial. — The interment of a lot of bleached bones in a soap box without ex-

pense to anyone does not entitle a coroner to the fees of \$15.00 for furnishing coffin and burial expenses. *Meads v. Dougherty County*, 98 Ga. 697, 25 S.E. 915 (1896).

It is not the duty of a coroner to bury any pauper bodies, except those in which an inquest have been held. *Walker v. Sheftall*, 73 Ga. 806 (1884).

OPINIONS OF THE ATTORNEY GENERAL

Limitation on type of fees allowed. — A coroner is not entitled to collect a fee for going to a collision and obtaining information concerning the same, but the coroner's fees are limited to those given by O.C.G.A. § 45-16-9 unless there should be some special act dealing with the particular county involved, setting up other supplemental fees and duties. 1954-56 Op. Att'y Gen. p. 53.

Where it is determined that an inquest is to be held, and the inquest is in fact held,

the fee to which the coroner is entitled is the fee for the inquest; the coroner is not also entitled to an investigation fee of \$25.00. 1963-65 Op. Att'y Gen. p. 780.

Fee for summoning jury. — There is no law which makes it one of the duties of a sheriff to summon a jury of inquest; accordingly, if the sheriff had no duty in that connection, the sheriff would not be entitled to a fee. 1945-47 Op. Att'y Gen. p. 57.

45-16-10. Furnishing information to out-of-state coroners.

Records, papers, or reports concerning the death of a person on file at any hospital, nursing home, or other medical facility in this state shall be available to a coroner of another state if such person was injured in, a resident of, or buried in the county of such coroner in such other state or if such records, papers, or reports are the subject of a subpoena issued by the coroner of another state. The release of such records to the coroner of another state shall not be prohibited by Article 4 of Chapter 18 of Title 50. (Code 1981, § 45-16-10, enacted by Ga. L. 1986, p. 1594, § 1; Ga. L. 1987, p. 559, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Release of medical records. — Medical facilities in this state may only release non-privileged portions of medical records to out-of-state coroners upon the receipt of: (1) satisfactory proof that the deceased person was a resident of, or buried in, the

county of out-of-state coroner; (2) satisfactory proof that, under the laws of deceased's own state, the particular coroner's office is a court of record; and (3) a subpoena issued and served in compliance with Georgia law. 1986 Op. Att'y Gen. No. 86-44.

45-16-11. Compensation of county coroners; increases; calculation; supplements; expenses.

(a)(1) Any other law to the contrary notwithstanding, the minimum annual salary of each coroner in any of the counties in this state in the following population brackets shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 1990 or any future such census. Except as otherwise provided in paragraph (2) of this subsection, each such

coroner shall receive an annual salary, payable in equal monthly installments from the funds of the coroner’s county, of not less than the amount fixed in the following schedule:

<u>Population</u>	<u>Minimum Salary</u>
0 — 11,889	\$ 1,200.00
11,890 — 19,999	2,400.00
20,000 — 34,999	3,600.00

(2) On and after July 1, 2001, whenever the employees in the classified service of the state merit system receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (b) of this Code section, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, shall be increased by a percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases received by state employees become effective; provided, however, that if the cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 45-16-11.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the coroner in such amount as it may fix from time to time; but no coroner’s compensation supplement shall be decreased

during any term of office. Any prior expenditure of county funds to supplement the coroner's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the coroner.

(b) The amounts provided in paragraph (1) of subsection (a) of this Code section and Code Section 45-16-11.1, as increased by paragraph (2) of subsection (a) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any coroner after December 31, 2000, effective the first day of January following the completion of each such period of service.

(c) The minimum salaries provided for under this Code section shall be in addition to any fees paid by the county governing authority to the coroner on a per-call basis and in addition to any expenses.

(d) The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a coroner's office shall come from funds other than the funds specified as salary in this Code section.

(e) This Code section shall not be construed to reduce the salary of any coroner in office on July 1, 2001; provided, however, that successors to such coroners in office on July 1, 2001, shall be governed by the provisions of this Code section. All local legislation in effect on July 1, 2001, or enacted thereafter affecting compensation for coroners of the various counties shall be of full force and effect except where the same provides for a salary lower than provided in this Code section, in which event this Code section shall prevail. (Code 1981, § 45-16-11, enacted by Ga. L. 2001, p. 902, § 18A.)

Editor's notes. — Ga. L. 2001, p. 902, § 18A, redesignated former Code Section 45-16-11 as present Code Section 45-16-11.1.

45-16-11.1. Compensation of county coroners for inmate deaths in state correctional institutions.

In addition to the minimum salary provided for in Code Section 45-16-11, in any county which is the site of more than one state correctional institution or prison for adults or juveniles and which compensates the county coroner by salary, the state shall compensate the county coroner in the amount of \$110.00 for each state inmate death in such county. The county coroner of such a county is authorized to accept the compensation provided in accordance with this Code section despite any local Act which requires such a coroner to send fees to the county treasury or the county governing authority. (Code 1981, § 45-16-11, enacted by Ga. L. 1998, p.

1159, § 17; Code 1981, § 45-16-11.1, as redesignated by Ga. L. 2001, p. 902, § 18A.)

The 2001 amendment, effective January 1, 2002, redesignated former Code Section 45-16-11 as this Code section; and, in the first sentence, inserted “addition to the minimum salary provided for in Code Section 45-16-11, in” and substituted “\$110.00” for “\$100.00”.

45-16-11.2. Monthly contingent expense allowance for the operation of the office of coroner.

In addition to any salary, fees, or expenses now or hereafter provided by law, the governing authority of each of the counties in this state in the following population bracket is authorized to provide as contingent expenses for the operation of the office of coroner, and payable from county funds, a monthly expense allowance of not less than the amount fixed in the following schedule:

<u>Population</u>	<u>Minimum Salary</u>
0 — 34,999	\$ 50.00

(Code 1981, § 45-16-11.2, enacted by Ga. L. 2001, p. 902, § 18A.)

Effective date. — This Code section became effective January 1, 2002.

ARTICLE 2

DEATH INVESTIGATIONS

Cross references. — Death certificates generally, § 31-10-15 et seq. Criteria for determining death, § 31-10-16.

OPINIONS OF THE ATTORNEY GENERAL

Certification of cause of death. — It is the duty of the funeral director who first assumes custody of the dead body to obtain medical certification of the cause of death; said medical certification should be completed and signed within 48 hours after death by the physician or osteopath in charge of the patient’s care for the illness or condition which resulted in death except when inquiry is required by the former provisions of the Post-mortem Examination Act. 1968 Op. Att’y Gen. No. 68-294.

A coroner on own initiative may not change the nature of the death recorded on a death certificate based on a subsequent

jury verdict in criminal or civil proceedings. 1967 Op. Att’y Gen. No. 67-378.

Eye witnesses not required. — By omitting from this article any reference to the absence of “eye witnesses” and including a reference to “sufficient evidence ... to disclose the cause of death,” the General Assembly meant to and did relieve the several counties of the necessity to incur the expense of a post mortem and an inquest where there was sufficient evidence to establish the cause of death, whether or not there were eye witnesses. 1954-56 Op. Att’y Gen. p. 57.

RESEARCH REFERENCES

ALR. — Liability for wrongful autopsy, 18 ALR4th 858.

Transplantation of organs, validity and construction of statutes organizing removal of body parts for transplant, 54 ALR4th 1214.

Homicide: cremation of victim's body as violation of accused's rights, 70 ALR4th 1091.

45-16-20. Short title.

This article shall be known and may be cited as the "Georgia Death Investigation Act." (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 1; Ga. L. 1990, p. 1735, § 3.)

JUDICIAL DECISIONS

Cited in *Jackson v. State*, 208 Ga. App. 391, 430 S.E.2d 781 (1993).

45-16-21. Definitions.

As used in this article, the term:

(1) "Autopsy" means the dissection of a dead body and the examination of bone, tissue, organs, and foreign objects for the purpose of determining the cause of death and circumstances surrounding the same, which procedure shall include as a minimum an external examination and the examination of the brain, neck and thoracic organs, and abdominal organs.

(1.1) "Chief medical examiner" means the chief medical examiner appointed pursuant to Code Section 35-3-153.

(2) "County medical examiner" means that office established in lieu of the office of coroner pursuant to Code Section 45-16-80 or any amendment to the Constitution continued pursuant to the authority of Article XI, Section I, Paragraph IV of the Constitution.

(3) "Division" means the Division of Forensic Sciences of the Georgia Bureau of Investigation.

(4) "External examination" means an external examination of a dead body but shall not include dissection of the body for any purpose except dissection which is necessary for and limited to procurement of blood or body fluids for toxicological or other analysis.

(5) "Forensic consultant" means a person meeting the requirements and authorized to perform the duties specified in subsection (c) of Code Section 45-16-23.

(6) “Inquest” means an official judicial inquiry before a coroner and coroner’s jury for the purpose of determining the cause of death.

(7) “Limited dissection” means the incision into or dissection of a dead body for diagnosis or evidence collection and the term includes without being limited to an external examination but does not include an individual examination of the:

- (A) Brain;
- (B) Neck organs;
- (C) Thoracic organs; and
- (D) Abdominal organs

but may include an examination of any but not all of the categories of organs specified in subparagraphs (A) through (D) of this paragraph.

(8) “Local medical examiner” means a person meeting the requirements and authorized to perform the duties specified in subsection (b) of Code Section 45-16-23.

(9) “Medical examiner” means:

- (A) The chief medical examiner;
- (B) A regional medical examiner;
- (C) A county medical examiner;
- (D) A local medical examiner; or

(E) Any person who is employed by the state and appointed as a medical examiner as of December 1, 1989, who continues to perform the duties and exercise the powers of a medical examiner under this article when such performance and exercise are within the scope of such employment.

(10) “Medical examiner’s inquiry” means an inquiry made by a medical examiner into the circumstances surrounding a death which is required to be reported under the provisions of Code Section 45-16-24, which inquiry may include, but is not required to include, a scene investigation, an external examination, a limited dissection, an autopsy, or any combination thereof.

(11) “Medical examiner’s investigator” means a person meeting the requirements and authorized to perform the duties specified in subsection (d) of Code Section 45-16-23.

(12) “Peace officer in charge” means any peace officer of the Georgia State Patrol or agent of the Georgia Bureau of Investigation, sheriff or sheriff’s deputy, peace officer assigned to the coroner’s office, county policeman, city policeman, or city detective who may be in charge of the

investigation of any case involving a death covered by Code Sections 45-16-27 and 45-16-32.

(13) "Regional medical examiner" means a medical examiner who is employed by the Georgia Bureau of Investigation and who is a pathologist certified in forensic pathology by the American Board of Pathology appointed by the chief medical examiner pursuant to Code Section 35-3-153.

(14) "Scene investigation" means an examination by the medical examiner or medical examiner's investigator of the area surrounding a dead body or area where a death or agonal event occurred.

(15) "Unattended death," "died unattended," or "died unattended by a physician" means a death where a person dies of apparently natural causes and has no physician who can certify the death as being due to natural causes. If the suspected cause of death directly involves any trauma or complication of such trauma, the death must be reported to the coroner or county medical examiner. An unattended death also occurs when a person is admitted in an unresponsive state to a hospital and dies within 24 hours of admission. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 2; Ga. L. 1960, p. 1009, § 1; Ga. L. 1988, p. 1631, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1992, p. 6, § 45; Ga. L. 1992, p. 1436, § 3; Ga. L. 1997, p. 1421, § 4; Ga. L. 1998, p. 128, § 45.)

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may

be cited as the 'Georgia Forensic Sciences Act of 1997.'"

JUDICIAL DECISIONS

Duties of coroner judicial in nature. — A coroner is not within the executive branch of government, because the primary function of the coroner is to conduct an inquest which is in the nature of a judicial proceeding. Therefore, a person serving as both justice of the peace and coroner is not disqualified per se under Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II, Para. III), from issuing a search

warrant in the coroner's capacity as justice of the peace. *Sanders v. State*, 151 Ga. App. 590, 260 S.E.2d 504 (1979), cert. denied, 444 U.S. 1047, 100 S. Ct. 737, 62 L. Ed. 2d 734 (1980).

Cited in *National Life & Accident Ins. Co. v. Fender*, 146 Ga. App. 545, 247 S.E.2d 195 (1978); *Hendon v. Cochran*, 177 Ga. App. 118, 338 S.E.2d 465 (1985); *Williams v. State*, 258 Ga. 305, 369 S.E.2d 232 (1988).

OPINIONS OF THE ATTORNEY GENERAL

A medical examiner comes within the scope of the definition of a public officer. 1968 Op. Att'y Gen. No. 68-201.

Under O.C.G.A. Art. 2, Ch. 16, T. 45 a coroner may not be designated to serve as a medical examiner; if a person serving as a coroner accepts appointment as a medical

examiner, that person will thereby vacate the office of coroner. 1952-53 Op. Att'y Gen. p. 295.

Qualifications of physicians appointed. — Physicians may be appointed as medical examiners pursuant to O.C.G.A. Art. 2, Ch. 16, T. 45, notwithstanding the fact that they hold

licenses which do not authorize the general practice of medicine. 1968 Op. Att'y Gen. No. 68-90.

Crime laboratory personnel. — While there is no need for the Commissioner of Human Resources to participate in the designation of crime laboratory personnel as medical examiners, the appointment of medical examiners who are not a part of the immediate staff of the Division of Forensic Sciences would require joint action by the division director and the Commissioner of

Human Resources. 1984 Op. Att'y Gen. No. 84-56.

It is not necessary for qualified crime laboratory personnel who are not medical doctors to receive an appointment to serve as medical examiners from both the director of the Division of Forensic Sciences, and the Commissioner of Human Resources since the director is authorized to make this designation independently. 1984 Op. Att'y Gen. No. 84-56.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 1 et seq. 22A Am. Jur. 2d, Dead Bodies, §§ 59-66.

C.J.S. — 18 C.J.S., Coroners, § 1 et seq. 25 C.J.S., Dead Bodies, §§ 2, 4.

45-16-22. Medical examiners' inquiries — Facilities, persons authorized to perform inquiries, payment of fees, jurisdiction, and clerical and secretarial assistance.

(a) The director of the division is authorized and directed to cooperate with and assist the peace officers in charge, medical examiners, and coroners of the state in making the facilities of the division available for the performing of medical examiners' inquiries on dead bodies as required by this article.

(b) The county governing authority shall after consulting with the coroner, if any, be authorized to appoint one or more local medical examiners who shall be licensed physicians or pathologists. The chief medical examiner may, at the request of a county governing authority, authorize one or more licensed physicians or pathologists at convenient locations throughout the state to act as local medical examiners in performing medical examiners' inquiries as required by this article. The chief medical examiner shall confer with local county officials in making appointments of regional and local medical examiners. Any regional or local medical examiner appointed by the chief medical examiner shall have such jurisdiction within this state as designated by the chief medical examiner.

(c) Except as otherwise provided in this article, it shall be in the sole discretion of the medical examiner to determine whether or not an autopsy or limited dissection is required; provided, however, that the medical examiner shall give due consideration to the opinions of the coroner and the peace officer in charge regarding the requirements of accepted investigation techniques and the rules of evidence applicable thereto.

(d) In the event that any local medical examiner or regional medical examiner is unable or unwilling to serve in any case, the coroner or the

peace officer in charge may call upon the chief medical examiner, who shall perform a medical examiner's inquiry or direct another medical examiner to perform such inquiry.

(e) For each external examination so performed, in cases where limited dissection or autopsy of the body is not required, the medical examiner shall receive the fee set in accordance with the provisions of Code Section 35-3-151. The fee in each case is to be paid from funds of the county in which the act was committed; or, if the county in which the act was committed is unknown, the fee shall be paid from funds of the county in which the body was found. In the event the place in which the act was committed is not known but is later established, the county in which the act was committed shall be responsible for payment of fees incurred by the medical examiner. Subject to funds being appropriated or otherwise available for such purpose, the chief medical examiner shall provide transportation of the deceased person to the site of the autopsy, if such autopsy is to be performed by a state or regional medical examiner employed by the state, and to return the body to the county where the death occurred.

(f) When death occurs in a hospital as a direct result and consequence of acts or events taking place in a county other than the one in which such death occurs, the body shall be returned to the county in which such acts or events took place. When a dead body is found in a county in which the acts or events leading to death did not occur, it shall be returned to the county in which the acts or events did occur, if known. The coroner or local medical examiner of the county in which such acts or events took place shall assume jurisdiction and the medical examiner's inquiry, if any performed, shall be paid for from funds of the county in which such acts or events took place.

(g) In the event that a medical examiner's inquiry is performed by the chief medical examiner or an employee thereof, no fee therefor shall be imposed pursuant to this Code section. In the event that a medical examiner's inquiry is performed by a medical examiner regularly employed at a fixed compensation by any county or group of counties, no fee shall be imposed upon any county or group of counties employing that medical examiner at a fixed compensation.

(h) Any person holding office as a medical examiner pursuant to an appointment of the state medical examiner on May 1, 1997, shall continue in the exercise of his or her functions and duties until such person's successor has been duly appointed. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 3; Ga. L. 1960, p. 1009, § 2; Ga. L. 1969, p. 38, § 1; Ga. L. 1974, p. 503, § 1; Ga. L. 1979, p. 1321, § 1; Ga. L. 1984, p. 812, § 1; Ga. L. 1985, p. 843, § 4; Ga. L. 1989, p. 417, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1997, p. 1421, § 5; Ga. L. 1998, p. 128, § 45.)

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Forensic Sciences Act of 1997.'"

Subsection (h) as added by Ga. L. 1998, p. 128, § 45, is a codification of Ga. L. 1997, p. 1421, § 11(a).

JUDICIAL DECISIONS

Cited in Pittman v. State, 110 Ga. App. 625, 139 S.E.2d 507 (1964).

OPINIONS OF THE ATTORNEY GENERAL

Tenure for medical examiners. — As O.C.G.A. § 45-16-22 does not specify a tenure for medical examiners, the authorized authorities are free to establish such term as they deem in the best interest of the state. 1965-66 Op. Att'y Gen. No. 66-16.

Consultation with coroner. — As the medical examiner is appointed after conference

with local county officials, the coroner is to be consulted. 1970 Op. Att'y Gen. No. U70-240.

Violation of law. — The removal of a body to a funeral home without the direction of the peace officer, coroner, or medical examiner is a violation of the law and a misdemeanor. 1962 Op. Att'y Gen. p. 377.

45-16-23. Delegation of power by coroner or county medical examiner; qualifications of those authorized to perform examinations.

(a) Notwithstanding any other provision of this chapter, any coroner or county medical examiner may delegate to a local medical examiner, forensic consultant, or medical examiner's investigator the power to perform those duties of such coroner or medical examiner specified in this Code section if the person to whom such power is thus delegated meets the applicable requirements of this Code section for the performance of such duties, but the performance of those delegated duties shall not in any manner infringe upon or diminish the authority of the peace officer in charge at the scene of the crime.

(b) A local medical examiner shall be a licensed physician appointed by the state medical examiner to perform scene investigations, external examinations, limited dissections, autopsies, or any combination of such duties.

(c) A forensic consultant shall be an expert in a field of forensic science, including but not limited to odontology or anthropology, appointed and authorized by the state medical examiner to examine human remains and evidence under the medical examiner's jurisdiction.

(d) A medical examiner's investigator shall be a person employed by a medical examiner to perform duties of such medical examiner with the same authority as the medical examiner while at the scene of death and during subsequent investigation, except that no medical examiner's investigator is authorized to make any arrest or perform official external

examinations, limited dissections, or autopsies. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 24; Ga. L. 1990, p. 1735, § 3.)

45-16-24. Notification of suspicious or unusual deaths; court ordered medical examiner's inquiry; written report of inquiry.

(a) When any person dies in any county in this state:

- (1) As a result of violence;
- (2) By suicide or casualty;
- (3) Suddenly when in apparent good health;
- (4) When unattended by a physician;
- (5) In any suspicious or unusual manner, with particular attention to those persons 16 years of age and under;
- (6) After birth but before seven years of age if the death is unexpected or unexplained;
- (7) As a result of an execution carried out pursuant to the imposition of the death penalty under Article 2 of Chapter 10 of Title 17;
- (8) When an inmate of a state hospital or a state, county, or city penal institution; or
- (9) After having been admitted to a hospital in an unconscious state and without regaining consciousness within 24 hours of admission,

it shall be the duty of any law enforcement officer or other person having knowledge of such death to notify immediately the coroner or county medical examiner of the county wherein the body is found or death occurs. For the purposes of this Code section, no person shall be deemed to have died unattended when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31.

(b) A coroner or county medical examiner who is notified of a death pursuant to subsection (a) of this Code section shall order a medical examiner's inquiry of that death.

(c) Whenever an affidavit is made and filed with a court having criminal jurisdiction attesting that a person came to his death by foul play, that court may interrogate and examine witnesses, if any exist, as to the necessity of a medical examiner's inquiry. Should the court decide that a medical examiner's inquiry is essential to the ends of justice, such inquiry shall be ordered by that court.

(d) A medical examiner's inquiry required under this Code section shall be reduced to writing and filed as provided in Code Section 45-16-32. At the time of such filing, a copy of the medical examiner's inquiry into a death

reported to a coroner or county medical examiner pursuant to paragraph (6) of subsection (a) of this Code section shall also be transmitted to the department of family and children services of the county in which the child resided at the time of death. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 8; Ga. L. 1984, p. 812, § 2; Ga. L. 1985, p. 1073, § 1; Ga. L. 1990, p. 1735, § 3; Ga. L. 1994, p. 391, § 1.)

JUDICIAL DECISIONS

Cited in National Life & Accident Ins. Co. v. Fender, 146 Ga. App. 545, 247 S.E.2d 195 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Correlating O.C.G.A. §§ 45-16-24, 45-16-25, and 45-16-27 together, no post-mortem or autopsy need be performed where the deceased was under the care of a physician and there is no evidence of violence or suicide; if the deceased was under the care of a physician it is not essential that the physician be present at the instant of death to avoid the necessity of notifying the coroner. 1973 Op. Att'y Gen. No. U73-65.

Inquest or post-mortem not necessary. — The provisions of O.C.G.A. § 45-16-27(a), relating to the necessity of taking inquests, have been construed as being somewhat limited by later sections of O.C.G.A. Art. 2, Ch. 16, T. 45, viz., O.C.G.A. §§ 45-16-24, 45-16-25 and 45-16-33, in that an inquest and

post-mortem would not be necessary where there is sufficient evidence to disclose the cause of death. 1957 Op. Att'y Gen. p. 21.

Organ donations. — Duties of law enforcement officer and medical technicians to facilitate organ donations under former O.C.G.A. § 17-16-11(b) must be performed harmoniously with the coroner's duty to take charge of the body of a fatally injured individual under O.C.G.A. § 45-16-24. 1996 Op. Att'y Gen. No. 96-13.

Violation of law. — The removal of a body to a funeral home without the direction of the peace officer, coroner, or medical examiner is a violation of the law and a misdemeanor. 1962 Op. Att'y Gen. p. 377.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 7 et seq. 22A Am. Jur. 2d, Dead Bodies, §§ 1, 59-69.

C.J.S. — 18 C.J.S., Coroners, § 8 et seq. 25 C.J.S., Dead Bodies, §§ 2, 4.

ALR. — Criminal liability for death of another as result of accused's attempt to kill self or assist another's suicide, 40 ALR4th 702.

45-16-25. Duties of coroner or county medical examiner upon receipt of notice of suspicious or unusual death; authority to embalm body; identification; inventory and disposition of deceased's property; use of deceased's property for evidence.

(a)(1) Upon receipt of the notice required by Code Section 45-16-24, the coroner or county medical examiner shall immediately take charge of the body. If a registered professional nurse authorized to make a pronouncement of death under Code Section 31-10-16 or a qualified physician is not available, a coroner, deputy coroner, or medical examiner's investigator

may make a pronouncement of death at the investigation scene if, and only if, one or more of the following conditions is met:

- (A) The body is in a state of rigor mortis with lividity present;
- (B) The body is in a state of decomposition evidenced by a component of putrefaction;
- (C) The body is skeletonized; or
- (D) Death has been established by qualified emergency medical services personnel.

(2) It shall be the duty of a coroner notified as required by Code Section 45-16-24 to summon a medical examiner and proper peace officer. It shall be the duty of a county medical examiner so notified to summon a proper peace officer. When present at the scene of death, the peace officer shall have jurisdiction over the scene of death. The medical examiner or coroner and the peace officer shall together make inquiries regarding the cause, manner, and circumstances of death. If either the peace officer or medical examiner is not present at the scene of death, then whichever of the two officers is present shall have jurisdiction over the scene of death. If neither the peace officer nor the medical examiner is present at the scene of death in any county in which the office of coroner has not been replaced by a county medical examiner, the coroner shall assume the responsibility of such officers at the scene of death and shall have the body transported to a local medical examiner who shall conduct a medical examiner's inquiry. The medical examiner, at any time, to facilitate examination, when he or she deems it necessary, may have the body embalmed or retain it for refrigeration for preservation or to avoid the threat of infectious disease prior to release of the body to the next of kin. Such expense of embalming shall be paid by the county of the coroner's or medical examiner's jurisdiction.

(b) When positive identification of dead bodies has not been established conclusively through personal visual examination of the remains by persons well acquainted with the decedent in life or by comparison of fingerprints or footprints or by identification of unique physical characteristics, such as prosthetic appliances, or by comparison of skeletal X-rays, including previous fractures, or by amputations, the medical examiner must either chart or X-ray the decedent's dentition or call upon a licensed dentist of the medical examiner's choosing to carry out a dental examination of the body. This may be accomplished either by examination in situ or by removal of the jaws with teeth to the dentist's office. The dentist shall chart the deceased's dentition and make two copies, one of which shall be filed with the medical examiner's inquiry report to the division and the other with the Georgia Crime Information Center of the Georgia Bureau of Investigation. The dentist may, at his or her discretion, make such X-rays of the mouth as he or she deems necessary. The dentist shall be paid a fee as determined in

accordance with Code Section 35-3-151. These fees shall be paid by the county of the coroner's or local medical examiner's jurisdiction.

(c) The coroner or county medical examiner shall, in the absence of the next of kin of the deceased person, take possession of all property of value found on such person, make an exact inventory thereof on his or her report, and surrender the same to the person entitled to its custody or possession. The coroner, medical examiner, or peace officer shall take possession of any objects, anatomical specimens, or articles which, in his or her opinion, may be helpful in establishing the cause of death, manner of death, or identification of the deceased; and in cooperation with the division he or she may make such tests and examinations of said objects, specimens, or articles as may be necessary or useful in determining the cause of death, manner of death, or the identity of the deceased. At his or her discretion, the medical examiner or coroner may dispose of such objects, specimens, or articles when the medical examiner's or coroner's need for their retention has ended. In the event that a criminal prosecution arises, all such objects and articles together with reports of any examinations made upon them shall be retained in the custody of the director of the division until their production as evidence is required by the prosecuting officer or upon written order of the peace officer in charge or court having proper jurisdiction. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 9; Ga. L. 1960, p. 1009, § 6; Ga. L. 1985, p. 843, § 5; Ga. L. 1989, p. 829, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1735, § 3; Ga. L. 1990, p. 1968, § 1; Ga. L. 1996, p. 364, § 1; Ga. L. 1997, p. 1421, § 6; Ga. L. 2000, p. 1585, §§ 1, 2.)

The 2000 amendment, effective July 1, 2000, in the seventh sentence of paragraph (2) of subsection (a), inserted “, to facilitate examination,”; inserted “or she”, and inserted “or retain it for refrigeration”; in subsection (c), inserted “or her” in the first and second sentences; in the second sentence, inserted “, manner of death, or identification of the deceased”, inserted “or

she”, and inserted “, manner of death, or the identity of the deceased”; and added the third sentence.

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Forensic Sciences Act of 1997.’”

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The inquiry regarding the cause and manner of death is the joint responsibility of the coroner and the medical examiner. 1954-56 Op. Att’y Gen. p. 59.

Authority to perform post-mortem. — Since the medical examiner must sign the death certificate, as a practical matter the medical examiner would have to be assumed to have the authority to perform a post-mortem if the medical examiner deemed it necessary in order that the cause

of death may be properly set out therein. 1954-56 Op. Att’y Gen. p. 59.

Inquest and post-mortem not necessary. — The provisions of O.C.G.A. § 45-16-27(a), relating to the necessity of taking inquests, have been construed as being somewhat limited by other sections of the Act, viz., O.C.G.A. §§ 45-16-24, 45-16-25, and 45-16-33, in that, an inquest and post-mortem would not be necessary where there is sufficient evidence to disclose the

cause of death. 1957 Op. Att'y Gen. p. 21.

Violation of law. — The removal of a body to a funeral home without the direction of

the peace officer, coroner, or medical examiner is a violation of the law and a misdemeanor. 1962 Op. Att'y Gen. p. 377.

RESEARCH REFERENCES

ALR. — When holding of inquest or autopsy justified, 48 ALR 1209.

45-16-25.1. Remains of deceased to be released to next of kin within 24 hours; exception in cases where foul play suspected.

A dead body, other than skeletal remains, taken into custody under this article shall be released to the next of kin of the deceased, or to the agent of the next of kin, no later than 24 hours after the demand for release by that next of kin, or agent thereof, unless by that time the peace officer, medical examiner, or coroner has made a written finding that foul play may have been involved in the death of the deceased. (Code 1981, § 45-16-25.1, enacted by Ga. L. 1983, p. 728, § 1; Ga. L. 1990, p. 1735, § 3.)

45-16-26. Assumption of duties by medical examiner in absence of coroner or deputy coroner; signing of death certificates.

When there is no coroner or deputy coroner in a county in which the office of coroner has not been replaced by a county medical examiner or when both are absent from the county when needed or will not or cannot perform the duties required under this article, the medical examiner shall assume the duties and responsibilities of the coroner. When the medical examiner is performing the duties of the coroner in such cases, such medical examiner may sign the death certificate except when an inquest is held. (Orig. Code 1863, § 573; Code 1868, § 637; Code 1873, § 596; Code 1882, § 596; Civil Code 1895, § 4074; Penal Code 1895, § 1268; Civil Code 1910, § 4671; Penal Code 1910, § 1350; Code 1933, § 21-204; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 22; Ga. L. 1984, p. 812, § 3; Ga. L. 1985, p. 843, § 6; Ga. L. 1990, p. 1735, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 4.

C.J.S. — 18 C.J.S., Coroners, § 6 et seq.

45-16-27. When inquest to be held; special situations; coroner's fee; issuance of subpoenas for books, records, or papers; cost of copying; limited disclosure of photographs.

(a) Coroners shall require an inquest to be conducted in their respective counties as follows:

(1) When any person dies under any circumstances specified in paragraphs (1) through (8) of subsection (a) of Code Section 45-16-24;

provided, however, that an inquest is not required to be held, although the coroner is authorized to hold an inquest, under the following circumstances:

(A) When upon the completion of the medical examiner's inquiry the peace officer in charge and the medical examiner are satisfied that, even though death resulted from violence, no foul play was involved. In this event, the peace officer in charge and the medical examiner shall make a written report of their investigation and findings to the division as set forth in Code Section 45-16-32 and upon their recommendation, the coroner shall make and file a proper death certificate;

(B) When there is sufficient evidence to establish the cause and manner of death, even though the medical examiner's inquiry revealed that death resulted from foul play;

(C) When no demand for an inquest is made within 30 days after the filing of the death certificate. However, if such demand is made by the party or parties affected by the death, the coroner is authorized to hold the inquest;

(D) When upon the completion of the medical examiner's inquiry the medical examiner and peace officer in charge are sufficiently satisfied that death resulted from natural causes, and that medical examiner or coroner is willing to and does sign and file a proper death certificate, and no demand for an inquest is made within 30 days thereafter;

(D.1) In cases of deaths resulting from an accident involving any civil aircraft, it shall be the responsibility of the peace officer in charge to notify the National Transportation Safety Board or the Federal Aviation Administration of such accident, to proceed to the scene and guard the area in such manner that no bodies, wreckage, cargo, or mail shall be moved or disturbed until authorized by a representative of the National Transportation Safety Board or the Federal Aviation Administration except to the extent necessary to remove persons injured or trapped, to protect the wreckage from further damage, or to protect the public from injury. Where it is necessary to move aircraft wreckage, mail, or cargo, sketches, descriptive notes, and photographs shall be made, if possible, of the original positions and condition of the wreckage and any significant impact marks. The coroner or medical examiner shall assist investigators from the National Transportation Safety Board or the Federal Aviation Administration as authorized by federal law;

(E) When after full and complete investigation no evidence of foul play is found in cases of hidden cause of death which fall under the jurisdiction of the coroner. The coroner shall be authorized to sign the death certificate on the basis of the information given to him in the

reports of the peace officer in charge and the medical examiner, provided that, in such hidden causes of death, after a complete investigation, if sufficient medical history is obtained by the coroner, the peace officer in charge, or the medical examiner to disclose the cause of death and if the attending physician will sign the death certificate, such cases shall not come under the jurisdiction of the coroner; provided, further, that, if there are sufficient competent eyewitnesses to an act in the opinion of the peace officer in charge, such cases shall not come under the jurisdiction of the coroner; or

(F) In cases of deaths of personnel in the armed forces of the United States government resulting from airplane disasters involving airplanes of the armed forces, including crashes or explosions, which deaths shall not come under the jurisdiction of the coroner. It shall be the responsibility of the peace officer in charge to notify the proper armed forces of the United States government immediately of such airplane crashes or explosions in order that they may send their trained forces to the scene for investigation. It shall be the duty of the peace officer in charge, when notified of such crashes or explosions, to proceed to the scene and guard the area in such manner that no bodies or parts of said airplanes shall be moved or disturbed until the arrival of proper investigating officers from the armed forces of the United States government;

(2) When an inmate of a state hospital or a state, county, or city penal institution dies unexpectedly without an attending physician or as a result of violence. The chief medical examiner or his or her designee, regional medical examiner, or local medical examiner shall perform all medical examiners' inquiries. The coroner, in those counties in which such office has not been replaced by a local medical examiner, shall hold an inquest after receiving the written reports as set forth in Code Section 45-16-32;

(3) When ordered by a court in connection with a medical examiner's inquiry ordered by that court pursuant to subsection (c) of Code Section 45-16-24; or

(4) Notwithstanding any other provisions of this subsection, no person shall be deemed to have died unattended by a physician when the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31.

(b) On and after July 1, 1999, coroners shall be entitled to an investigation fee of \$125.00 where no jury is impaneled or a fee of \$250.00 where a jury is impaneled and shall be paid upon receipt of a monthly statement to the county treasury. A deputy coroner shall receive the same fee as the coroner for the performance of services in place of the coroner and shall be paid upon receipt of a monthly statement to the county treasury. Such fee shall be paid within ten days after receipt of the coroner's monthly

statement by the county where the investigation or inquest is held except in counties where the coroner receives an annual salary, in which case no fee shall be imposed upon the county by such salaried coroner or deputy coroner.

(c) When a coroner or a medical examiner or a medical examiner from the office of chief medical examiner, as established in Code Section 35-3-153, conducts an investigation into the death of an individual, the coroner, medical examiner, or medical examiner from the office of chief medical examiner shall be authorized to issue subpoenas to compel the production of any books, records, including but not limited to medical records from hospitals, medical clinics, psychiatric hospitals, physicians' offices, chiropractors' offices, and any other health care delivery facility, or papers relevant to the cause of death including without limitation AIDS confidential information as defined by Code Section 31-22-9.1. Any books, records, or papers received by the coroner, medical examiner, or medical examiner from the office of chief medical examiner pursuant to the subpoena must be regarded as confidential information and privileged and not subject to disclosure under Article 4 of Chapter 18 of Title 50. The actual costs of copying any books, records, or papers for the purposes of responding to a subpoena under this subsection shall be paid out of county funds to the person or entity required to respond to that subpoena, and the governing authority of the county of which that coroner or county medical examiner is a public officer shall pay those costs within 30 days after a bill therefor is submitted to the county. A medical examiner from the office of chief medical examiner shall pay the costs of copying from state funds within 30 days after a bill therefor is submitted to the state.

(d) Autopsy photographs shall not be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that this subsection shall have no application to the disclosure of such photographs to law enforcement agencies and prosecutors for law enforcement purposes or, in closed criminal investigations, to medical schools, medical facilities, and physicians for medical purposes; to individuals who have secured a written release from the deceased's next of kin; or to the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of securing a written release or when access to the photographs is requested by the next of kin, the deceased's next of kin shall be:

- (1) The spouse of the deceased if living;
- (2) If there is no living spouse of the deceased, an adult child of the deceased;
- (3) If there is no living spouse or adult child, a parent of the deceased;
- (4) If there is no living spouse, adult child, or parent, a sibling of the deceased;
- (5) If there is no living spouse, adult child, parent, or sibling of the deceased, a grandparent of the deceased;

- (6) If none of the above are living, an uncle of the deceased;
- (7) If none of the above are living, an aunt of the deceased; or
- (8) If none of the above are living, a first cousin of the deceased.

A superior court may, in closed criminal investigations, order the disclosure of such photographs upon findings in writing that disclosure is in the public interest and that it outweighs any privacy interest that may be asserted by the deceased's next of kin. In any such action, the court shall review the photographs in question in camera and may condition any disclosure on such measures as the court may deem necessary to accommodate the interests of the parties before it. (Laws 1823, Cobb's 1851 Digest, p. 537; Code 1863, § 566; Code 1868, § 630; Code 1873, § 589; Code 1882, § 589; Ga. L. 1893, p. 116, § 1; Penal Code 1895, § 1255; Ga. L. 1901, p. 44, § 1; Penal Code 1910, § 1337; Code 1933, § 21-202; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 5; Ga. L. 1960, p. 1009, § 4; Ga. L. 1961, p. 437, § 1; Ga. L. 1980, p. 543, § 5; Ga. L. 1981, p. 611, § 2; Ga. L. 1984, p. 812, § 4; Ga. L. 1985, p. 1073, § 2; Ga. L. 1986, p. 10, § 45; Ga. L. 1986, p. 1594, § 2; Ga. L. 1988, p. 722, § 1; Ga. L. 1990, p. 1735, § 3; Ga. L. 1995, p. 350, § 1; Ga. L. 1997, p. 1421, §§ 7, 8; Ga. L. 1999, p. 869, § 3; Ga. L. 2002, p. 667, § 1.)

The 2002 amendment, effective May 10, 2002, rewrote subsection (c) and added subsection (d).

Cross references. — Sudden or unusual death of inmate, § 42-5-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "July 1, 1999," was substituted for "the effective date of this subsection," in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2002, "camera and" was substituted "camera, and" in the undesignated paragraph of subsection (d).

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Forensic Sciences Act of 1997.'"

JUDICIAL DECISIONS

Coroner's discretion. — In carrying out the provisions of O.C.G.A. § 45-16-27, the coroner must act within the limits of a sound discretion; and the coroner is presumed to do so until the contrary appears. *Floyd County v. Miller*, 4 Ga. App. 1, 60 S.E. 823 (1908).

The coroner has no vested right to hold an inquest over the bodies of persons found dead in the county, and to charge the county therefor, when the public laws of the state do not require such action. *Fryer v. Central R.R. & Banking Co.*, 50 Ga. 581 (1874).

Killing by mob. — It is the duty of the coroner to hold an inquest when it is apparent from the body of the deceased that the person came to their death by violence,

unless it be known by whose hands death was occasioned; and this rule should not be relaxed in a case when a citizen was killed by a mob. *Floyd County v. Miller*, 4 Ga. App. 1, 60 S.E. 823 (1908).

County liable for fees. — A county is liable for the fees of a coroner for summoning an inquest on a dead body and returning an inquisition. *Davis v. County of Bibb*, 116 Ga. 23, 42 S.E. 403 (1902).

Cited in *Meads v. Dougherty County*, 98 Ga. 697, 25 S.E. 915 (1896); *Herndon v. Jones County*, 18 Ga. App. 523, 89 S.E. 1047 (1916); *Smith v. State*, 143 Ga. App. 347, 238 S.E.2d 698 (1977); *Davenport v. State*, 245 Ga. 845, 268 S.E.2d 337 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Inquest or post-mortem not necessary. — The provisions of O.C.G.A. § 45-16-27(a), relating to the necessity of taking inquests, have been construed as being somewhat limited by other sections of the Act, viz., O.C.G.A. §§ 45-16-24, 45-16-25, and 45-16-33, in that, an inquest and post-mortem would not be necessary where there is sufficient evidence to disclose the cause of death. 1957 Op. Att'y Gen. p. 21.

Removal of body by funeral director. — When a post-mortem examination would be required under the circumstances set forth in O.C.G.A. § 45-16-27, the funeral director should not remove the body until instructed to do so by the coroner. 1968 Op. Att'y Gen. No. 68-294.

"Casualty" as found in O.C.G.A. § 45-16-27 has its usual legal definition which is death by misfortune or accident. 1960-61 Op. Att'y Gen. p. 345.

Death unattended by physician. — The phrase "dies when unattended by a physician" as used in O.C.G.A. § 45-16-27 refers to those deaths which occur while the deceased was not under the care of a physician for treatment of the cause of death. 1960-61 Op. Att'y Gen. p. 345.

Where infants die while unattended by a physician or are stillborn, without the aid of a physician, the coroner should require a proper post-mortem examination or autopsy notwithstanding any unwillingness of the parents of the deceased child to give their permission for such an examination or autopsy. 1967 Op. Att'y Gen. No. 67-68.

Coroners have power to investigate deaths occurring during anesthesia. 1960-61 Op. Att'y Gen. p. 61.

"Investigation" more than mere presence. — The word "investigation" as it is used in

O.C.G.A. § 45-16-27 means something more than coroner's mere presence at scene of death. 1982 Op. Att'y Gen. No. U82-35.

O.C.G.A. § 45-16-27 covers automobile accidents which occur within the coroner's jurisdiction and result in fatalities. 1979 Op. Att'y Gen. No. U79-10.

Including accidents involving servicemen. — A coroner's jurisdiction extends to cases of servicemen resulting from automobile accidents in the county. 1970 Op. Att'y Gen. No. U70-109.

Autopsies on prison inmates. — There is no provision for, nor is there any reason for the warden of the Georgia State Prison to become involved in the granting of permission to physicians to perform autopsies upon the bodies of prison inmates who die at a hospital. 1967 Op. Att'y Gen. No. 67-445.

Compensation of coroner. — Where it is determined that an inquest is to be held, and the inquest is in fact held, the fee to which the coroner is entitled is the fee for the inquest; the coroner is not also entitled to an investigation fee. 1963-65 Op. Att'y Gen. p. 780.

Department of Health not authorized to pay nor county coroner to receive additional compensation above that prescribed by law for coroners notwithstanding that the coroner is called upon to perform additional work in connection with deaths at state hospital. 1962 Op. Att'y Gen. p. 375.

Post-mortem examination not prerequisite for fee. — The coroner must conduct an investigation before being entitled to a fee for that service; however, it is not necessary that a post-mortem examination be conducted before the coroner is entitled to a fee. 1982 Op. Att'y Gen. No. U82-35.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 7. 22A Am. Jur. 2d, Dead Bodies, §§ 59-66.

C.J.S. — 25 C.J.S., Dead Bodies, §§ 2, 4.

ALR. — When holding of inquest or autopsy justified, 48 ALR 1209.

Liability for wrongful autopsy, 18 ALR4th 858.

45-16-27.1. Medical examination of unexpected or unexplained death of person under seven years of age.

(a) Where a coroner or county medical examiner has been notified pursuant to paragraph (6) of subsection (a) of Code Section 45-16-24 of the death of any person after birth but before seven years of age whose death is unexpected or unexplained, the medical examiner's inquiry required by Code Section 45-16-25 shall include an autopsy unless that inquiry shows that such death was expected or explainable with a reasonable degree of medical certainty.

(b) The provisions of this Code section shall apply notwithstanding subsection (b) of Code Section 45-16-22 or any other provision of this article. (Code 1981, § 45-16-27.1, enacted by Ga. L. 1990, p. 1735, § 3; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "seven years" for "7 years" in subsection (a).

Law reviews. — For note on 1990 enactment of this Code section, see 7 Ga. St. U.L. Rev. 268 (1990).

45-16-28. Performance of autopsy when not required under Code Section 45-16-24.

In the case of death of any person under such circumstances as would not require a medical examiner's inquiry under Code Section 45-16-24, any physician who is duly licensed under the laws of this state or any other state having licensing requirements equal to or greater than those imposed by this state shall be deemed to have been legally authorized to perform an autopsy upon the body of a deceased person when such autopsy has been consented to by the person assuming custody of the body for the purposes of burial, such as the husband, wife, father, mother, child, guardian, next of kin, or, in the absence of any of the foregoing, a friend of such deceased person charged by law with the responsibility of burial. If two or more of such persons assume custody of the body, the consent of one of them shall be deemed sufficient legal authorization for the performance of the autopsy. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 6; Ga. L. 1990, p. 1735, § 3.)

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Authority to perform autopsy. — It would be unwise to undertake an examination of the head or other parts of the body without complete authority to do so, especially in those cases in which the autopsy is not necessary to discover the cause of death or it is definitely known that the cause of death arose from a condition existing in some part of the body other than the head; it would be

sufficient if the family of the deceased authorized a post-mortem examination including an examination of all areas of the body. 1958-59 Op. Att'y Gen. p. 295.

Autopsies on prison inmates. — There is no provision for, nor is there any reason for the warden of the Georgia State Prison to become involved in the granting of permission to physicians to perform autopsies upon

the bodies of prison inmates who die at a hospital. 1967 Op. Att’y Gen. No. 67-445.

Neither notice nor permission required.
— There is no requirement that notice be

given to the warden, nor that the warden secure permission for an autopsy from the next of kin. 1967 Op. Att’y Gen. No. 67-445.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 1. 22A Am. Jur. 2d, Dead Bodies, §§ 59-66.

C.J.S. — 18 C.J.S., Coroners, §§ 8, 9. 25 C.J.S., Dead Bodies, §§ 2, 4.

ALR. — Liability for wrongful autopsy, 18 ALR4th 858.

45-16-29. Removal of body generally.

No person shall move or authorize the removal of any body from the place where the same is found until the investigation is completed and such removal is authorized by the coroner or medical examiner present at such investigation; or, if no such coroner or medical examiner is present, the peace officer shall authorize such removal; provided, however, that this Code section shall not apply to the removal of a body where the death occurred while the person was a patient of a hospice licensed under Article 9 of Chapter 7 of Title 31. If the death resulted from an accident involving the operation of civil aircraft, no body shall be removed until authorized by the representative of the National Transportation Safety Board or the Federal Aviation Administration. (Ga. L. 1960, p. 1009, § 9; Ga. L. 1985, p. 843, § 7; Ga. L. 1985, p. 1073, § 3; Ga. L. 1990, p. 1735, § 3; Ga. L. 1997, p. 1421, § 9.)

Editor’s notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Forensic Sciences Act of 1997’”.

45-16-30. Transport of body across state line.

No person shall move or transport a body across a Georgia state line until the investigation of the case and the medical examiner’s inquiry are complete and until the removal of the body is authorized by the coroner or medical examiner. Except when the conduct is a violation of Code Section 16-10-94, any person who violates this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$500.00 or more than \$1,000.00 or 60 days in jail, or both. (Ga. L. 1960, p. 1009, § 9; Ga. L. 1985, p. 843, § 8; Ga. L. 1990, p. 1735, § 3; Ga. L. 1997, p. 1421, § 9.)

Editor’s notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Georgia Forensic Sciences Act of 1997.’”

45-16-31. Authorization of removal of body for convenience of examination; investigation of premises before removal.

When the deceased body lies in a place inconvenient for holding a medical examiner's inquiry, the medical examiner or coroner shall be allowed to remove the body to the autopsy room of the nearest public hospital or morgue. If neither the coroner nor the medical examiner is immediately available, the peace officer may assume the authority to have the body moved to such facility. When such facility is not reasonably available, the body may be removed to such other suitable place as may be designated by the coroner or the medical examiner or by the peace officer in charge in the absence of the coroner or medical examiner. If the peace officer in charge is present, no such body shall be removed until photographs of the body and surrounding premises have been made and a thorough investigation of the premises has been made by the proper investigating authorities. (Laws 1850, Cobb's 1851 Digest, p. 540; Ga. L. 1862-63, p. 166, § 2; Code 1868, § 4039; Code 1873, § 4110; Code 1882, § 4110; Penal Code 1895, § 1269; Penal Code 1910, § 1351; Code 1933, § 21-206; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 7; Ga. L. 1960, p. 1009, § 5; Ga. L. 1985, p. 843, § 9; Ga. L. 1990, p. 1735, § 3.)

History of section. — It appears that § 4110, which would be in the history of this section, was inadvertently left out of the 1882 Code.

OPINIONS OF THE ATTORNEY GENERAL

Unauthorized removal of body. — The removal of a body to a funeral home without the direction of the peace officer, coroner, or medical examiner is a violation of the law and a misdemeanor. 1962 Op. Att'y Gen. p. 377.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 7 et seq. 22A Am. Jur. 2d, Dead Bodies, §§ 59-66.

C.J.S. — 18 C.J.S., Coroners, § 8 et seq. 25 C.J.S., Dead Bodies, §§ 2, 4.

ALR. — Constitutionality of statute or ordinance requiring, or permitting, removal of bodies from cemeteries, 71 ALR 1040.

45-16-32. Report of examination and investigation; maintenance of copies; verification of foul play by division; transmittal of copies of reports to district attorneys.

The medical examiner and coroner shall file a report of each medical examiner's inquiry and coroner's investigation with the director of the division. The division shall maintain the reports and function as a central repository for the storage and dissemination of such reports pursuant to Article 4 of Chapter 18 of Title 50. The coroner or county medical examiner shall maintain permanent records of such reports. The coroner or county medical examiner may file all original reports with the clerk of the superior

court of the county. In cases where such report indicates a suspicion of foul play, the medical examiner and peace officer in charge shall transmit any specimens, samples, or other evidence to the division for analysis. In cases where reports indicating foul play are verified by the division, the director of the division shall provide a completed crime lab report to the appropriate prosecuting attorney where the acts or events leading to the death occurred. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 4; Ga. L. 1960, p. 1009, § 3; Ga. L. 1984, p. 812, § 5; Ga. L. 1985, p. 843, § 10; Ga. L. 1989, p. 417, § 2; Ga. L. 1990, p. 1735, § 3; Ga. L. 1999, p. 869, § 4.)

RESEARCH REFERENCES

ALR. — Presumption against suicide as dict, or similar documentary evidence; 159 overcome by death certificate, coroner's ver- ALR 181.

45-16-33. Coroner to make inquest upon completion of examination and verification.

Upon the completion of the medical examiner's inquiry by the medical examiner, as provided in Code Section 45-16-24, and after verification by the division when such verification is required, the coroner shall then make an inquest into the death of such deceased person as provided in Code Section 45-16-27. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 10; Ga. L. 1960, p. 1009, § 7; Ga. L. 1990, p. 1735, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

The Constitution of Georgia of 1983 does not affect the statutory authority of coroners to hold inquests. 1983 Op. Att'y Gen. No. U83-46.

Inquest and post-mortem not necessary. — The provisions of O.C.G.A. § 45-16-27(a), relating to the necessity to taking inquests, have been construed as being somewhat limited by other sections of the Act, viz., O.C.G.A. §§ 45-16-24, 45-16-25, and 46-16-33, in that, an inquest and post-mortem would not be necessary where there is sufficient evidence to disclose the cause of death. 1957 Op. Att'y Gen. p. 21.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 7 et seq.

C.J.S. — 18 C.J.S., Coroners, § 10 et seq.

ALR. — When holding of inquest or autopsy justified, 48 ALR 1209.

45-16-34. Issuance of subpoenas; administration of oath to witnesses.

(a) The coroner shall issue subpoenas to or otherwise compel the attendance of witnesses; and he shall administer to such witnesses the following oath:

“The evidence that you shall give this inquest on behalf of the state concerning the death of _____ (or a person unknown, as the case

may be) shall be the truth, the whole truth, and nothing but the truth, so help you God.”

(b) When a coroner conducts an inquest into the death of an individual, he shall be authorized to issue subpoenas to compel production of any books, records, or papers relevant to the cause of death. Any books, records, or papers received by the coroner pursuant to the subpoena must be regarded as confidential information and privileged and not subject to disclosure under Article 4 of Chapter 18 of Title 50. The actual costs of copying any books, records, or papers for the purpose of responding to a coroner’s subpoena under this subsection shall be paid out of county funds to the person or entity required to respond to that subpoena, and the governing authority of the county of which that coroner is a public officer shall pay those costs within 30 days after a bill therefor is submitted to the county; provided, however, that the county shall not be responsible for duplication costs under \$25.00. (Laws 1823, Cobb’s 1851 Digest, p. 539; Code 1863, § 4007; Code 1868, § 4035; Code 1873, § 4106; Code 1882, § 4106; Penal Code 1895, § 1263; Penal Code 1910, § 1345; Code 1933, § 21-207; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 11; Ga. L. 1986, p. 1594, § 3; Ga. L. 1988, p. 13, § 45; Ga. L. 1990, p. 1735, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 13. **C.J.S.** — 18 C.J.S., Coroners, § 18 et seq.

45-16-35. Coroner to require material witnesses to enter into recognizance; petition for issuance of warrant for arrest of suspected person.

If the inquest discloses facts which lead or may lead to the prosecution of any person for the homicide of the person for whom the inquest is held, the coroner shall require all witnesses who testify to facts material to the issues involved in such prosecution to enter into a recognizance to appear in the superior court of the county in which the inquest is held and to give evidence against the defendant in such prosecution; and he shall also petition for the issuance of a warrant for the arrest of the person suspected of the homicide, which warrant shall be returnable as other warrants. (Laws 1823, Cobb’s 1851 Digest, p. 539; Code 1863, § 4008; Code 1868, § 4036; Code 1873, § 4107; Code 1882, § 4107; Penal Code 1895, § 1264; Penal Code 1910, § 1346; Code 1933, § 21-208; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 12; Ga. L. 1990, p. 1735, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Examination of witnesses by suspect’s attorney. — An attorney representing a suspected criminal would not have a legal right to appear at such inquest and examine witnesses. 1963-65 Op. Att’y Gen. p. 157.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 13.

C.J.S. — 18 C.J.S., Coroners, § 18 et seq.

45-16-36. Impaneling of jury to hold inquest; compensation of jurors.

The coroner shall summon and impanel five jurors and one alternate juror to hold an inquest, which jurors shall decide the verdict by a majority vote. The first grand jury impaneled at the fall term of the superior courts of the several counties shall fix the compensation of said jurors for the next succeeding year but such compensation shall not be less than \$5.00 nor more than \$25.00 per diem. It shall be the duty of the coroner or other person discharging the duties of the coroner to give a certificate of the fact of such service to each juror. Upon presentation of such certificate to the proper fiscal authority of the county in which the inquest is held, such fiscal authority shall pay the juror for his services. (Laws 1823, Cobb's 1851 Digest, p. 538; Ga. L. 1884-85, p. 92, § 1; Ga. L. 1893, p. 116, § 3; Penal Code 1895, § 1257; Penal Code 1910, § 1339; Code 1933, § 21-209; Ga. L. 1953, Jan.-Feb. Sess., p. 204, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 13; Ga. L. 1969, p. 761, § 1; Ga. L. 1982, p. 718, §§ 1, 2; Ga. L. 1990, p. 1735, § 3.)

JUDICIAL DECISIONS

Cited in *Douberly v. State*, 184 Ga. 573, 192 S.E.2d 223 (1937).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 14.

C.J.S. — 18 C.J.S., Coroners, § 15 et seq.

45-16-37. Jury not to be impaneled until investigation complete; jury not required to view body.

No coroner's jury shall be impaneled until the investigation is completed and copies of the reports of the medical examiner and the peace officer in charge are received by the coroner. The jury is not required to view the body. (Ga. L. 1960, p. 1009, § 9; Ga. L. 1990, p. 1735, § 3.)

45-16-38. Issuance of precept to sheriff to summon inquest jury; form.

Whenever a coroner receives notice of the death of any person within the limits of the county of which he is coroner, which death occurred under circumstances which make it his duty, under the law, to hold an inquest, he shall make out a precept directed to the sheriff or any constable of the county having jurisdiction requiring him to summon a jury of inquest

selected from the grand jury or traverse jury lists of the last excused term of the superior court of such county to appear before the coroner at the time and place mentioned in the precept, which precept may be in the following form:

State of Georgia

_____ County

To the sheriff or any lawful constable of said county,

Greeting:

You are required immediately to summon six persons of said county, chosen from the lists of grand jurors and traverse jurors of the last excused term of the superior court of said county, to be and appear before me, the undersigned, coroner of the county aforesaid, at _____, in said county, on the _____ day of _____ at _____ : _____ M. of that same day, then and there to inquire of, do, and execute all such things as in behalf of the state shall be given them in charge concerning the death of _____ (or a person unknown, as the case may be), and be you then and there with this precept to certify what you have done in the premises and further to do whatsoever else may in behalf of the state be enjoined upon you.

Given under my hand and seal, this the _____ day of _____, in the year of our Lord _____.

_____ Coroner (L.S.)

Such precept shall be immediately executed by the sheriff or constable in whose hands it may be placed; and, if the services of the sheriff or a constable cannot be conveniently obtained, the coroner may summon the jury himself. (Laws 1823, Cobb's 1851 Digest, p. 537; Code 1863, § 4002; Code 1868, § 4030; Code 1873, § 4101; Code 1882, § 4101; Penal Code 1895, § 1259; Penal Code 1910, § 1341; Code 1933, § 21-210; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 14; Ga. L. 1960, p. 1009, § 8; Ga. L. 1990, p. 1735, § 3; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Summoning jurors. — A coroner is authorized to use discretion in summoning jurors personally, or procuring the services of the sheriff for this duty. 1952-53 Op. Att'y Gen. p. 294.

Persons qualified to serve as jurors. — Only those persons whose names appear in

the grand jury and traverse jury lists for the terms of the superior court next preceding are qualified to serve as jurors at a coroner's inquest. 1952-53 Op. Att'y Gen. p. 294.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 14. **C.J.S.** — 18 C.J.S., Coroners, § 15 et seq.

45-16-39. Oath for foreman and jury of inquest.

(a) The following oath shall be administered to the foreman of the jury by the coroner:

“You, as foreman of the inquest, shall diligently inquire and true presentment make, on behalf of the State of Georgia, how and in what manner _____ (or a person deceased, unknown, as the case may be) came to his death and of such other matters relating to the same as shall be lawfully required of you, according to evidence, so help you God.”

(b) The remainder of the jury shall be sworn by the coroner as follows:

“The same oath which the foreman of this inquest has taken on his part each of you shall observe and keep upon your part, so help you God.”

(Laws 1823, Cobb's 1851 Digest, p. 538; Code 1863, § 4005; Code 1868, § 4033; Code 1873, § 4104; Code 1882, § 4104; Penal Code 1895, § 1261; Penal Code 1910, § 1343; Code 1933, § 21-212; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 16; Ga. L. 1990, p. 1735, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 14. **C.J.S.** — 18 C.J.S., Coroners, § 15 et seq.

45-16-40. Coroner's charge to jury; power of jury.

(a) The coroner shall charge the jurors to declare, and they shall so declare, whether the person for whom the inquest is held died by:

- (1) Homicide;
- (2) Suicide;
- (3) Accident;
- (4) Natural causes; or
- (5) Undetermined causes

and all of the circumstances relating to the death.

(b) The jury shall have full and unrestricted power to inquire and pass upon all the matters and things thus given them in charge and they shall have this power even if the whole or a part of the charge is omitted. (Laws 1823, Cobb's 1851 Digest, p. 538; Code 1863, § 4006; Code 1868, § 4034;

Code 1873, § 4105; Code 1882, § 4105; Penal Code 1895, § 1262; Penal Code 1910, § 1344; Code 1933, § 21-213; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 17; Ga. L. 1990, p. 1735, § 3.)

JUDICIAL DECISIONS

Powers. — Among the powers of a coroner's jury is that of declaring whether the person upon whose body the inquest is held came to death by murder; and, if so, who were the principals and the accessories. *Adams v. State*, 129 Ga. 248, 58 S.E. 822, 17 L.R.A. (n.s.) 468, 12 Ann. Cas. 158 (1907).

Effect of verdict. — The verdict of a coroner's jury has no probative value what-

ever as evidence, is binding upon no one, and cannot prejudice the right of any person. *Security Life Ins. Co. v. Blitch*, 155 Ga. App. 167, 270 S.E.2d 349 (1980).

Cited in *Smalls v. State*, 101 Ga. 570, 28 S.E. 981 (1897); *Douberly v. State*, 184 Ga. 573, 192 S.E. 223 (1937).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 14.

C.J.S. — 18 C.J.S., Coroners, § 15 et seq.

45-16-41. Defaulting juror to be fined by coroner.

Any juror failing to attend and serve on a coroner's inquest after being duly summoned may be fined by the coroner in a sum not exceeding \$100.00 to be levied and collected by execution issued by the coroner unless such defaulting juror shall file in the office of the judge of the probate court a good and sufficient excuse for the default to be judged by the next probate court held thereafter. (Laws 1823, Cobb's 1851 Digest, p. 538; Code 1863, § 4003; Code 1868, § 4031; Code 1873, § 4102; Code 1882, § 4102; Penal Code 1895, § 1260; Penal Code 1910, § 1342; Code 1933, § 21-211; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 15; Ga. L. 1984, p. 812, § 6; Ga. L. 1990, p. 1735, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 14.

C.J.S. — 18 C.J.S., Coroners, § 15 et seq.

45-16-42. Offering in evidence of results of examination.

In all inquests the results of the medical examiner's inquiry performed shall be offered in evidence either by oral testimony of the medical examiner or by introduction of a copy of the report filed with the director of the division, as verified in the cases requiring verification. The jury shall be free to reach a verdict in accord or discord with such evidence but in all cases such evidence must be presented to them for their consideration. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 18; Ga. L. 1990, p. 1735, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Legal effect of coroner's decision. — The decisions of a coroner or inquest are nothing more legally than a statement of an expert opinion as to the nature of the decedent's death, and, as such, lack any legally binding significance. 1967 Op. Att'y Gen. No. 67-378.

The decision of a coroner once reached, and a death certificate filed, is as final and binding as a verdict rendered by a coroner's jury. 1967 Op. Att'y Gen. No. 67-378.

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 13 et seq.

ALR. — Reviewing, setting aside, or quashing of verdict at coroner's inquest, 78 ALR2d 1218.

Official death certificate as evidence of cause of death in civil or criminal action, 21 ALR3d 418.

45-16-43. Receipt as evidence of records, findings, and reports of medical examiners' inquiries.

Reports of medical examiners' inquiries performed as provided in this article and copies of records, photographs, laboratory findings, and reports in the office of the director of the division, when duly attested by said director, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 19; Ga. L. 1990, p. 1735, § 3.)

JUDICIAL DECISIONS

Admission of laboratory findings. — Since O.C.G.A. § 45-16-43 does not change the rules of competency or relevancy, and since the most that laboratory evidence procured under O.C.G.A. § 45-16-43 could tend to prove is the analysis of the particular blood sample tested, it is necessary for the admissibility of this evidence to lay a proper foundation by showing the identity of the blood sample tested with the decedent and the chain of custody to render the report admissible as relevant evidence. *Interstate Life & Accident Ins. Co. v. Whitlock*, 112 Ga. App. 212, 144 S.E.2d 532 (1965).

It was not error to exclude portion of death certificate containing coroner's findings and to refuse to admit into evidence the coroner's jury verdict in action on insurance policy itself or for purpose of negating insurer's bad faith. *Security Life Ins. Co. v. Blich*, 155 Ga. App. 167, 270 S.E.2d 349 (1980).

Cited in *Green v. State*, 112 Ga. App. 329, 145 S.E.2d 80 (1965); *Elliott v. Leavitt*, 122 Ga. App. 622, 178 S.E.2d 268 (1970); *Beasley v. State*, 161 Ga. App. 29, 288 S.E.2d 828 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 18 Am. Jur. 2d, Coroners or Medical Examiners, § 13 et seq.

ALR. — Coroner's verdict or report as evidence on issue of suicide, 28 ALR2d 352.

Reviewing, setting aside, or quashing of

verdict at coroner's inquest, 78 ALR2d 1218.

Admissibility of testimony of coroner or mortician as to cause of death in homicide prosecution, 71 ALR3d 1265.

45-16-44. Disposition of bodies after examination and inquest; payment of burial expenses from deceased's estate.

After the medical examiner's inquiry and inquest have been completed, the dead body shall be delivered to the person legally entitled thereto for burial. If no person claims the body, it shall be turned over to the coroner of the county where death occurred for disposition as provided by law. If the deceased has an estate out of which burial expenses can be paid, either in whole or in part, such estate shall be taken for such purpose before any expense under this Code section is imposed upon any county. (Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 20; Ga. L. 1990, p. 1735, § 3.)

RESEARCH REFERENCES

ALR. — Enforcement of preference expressed by decedent as to disposition of his body after death, 54 ALR3d 1037.

45-16-45. Authority of coroners and medical examiners to disinter bodies.

In order to implement this article, coroners are authorized to disinter any body already buried and, like a sheriff, to command the power of the county for that purpose. Medical examiners, other than local medical examiners, may likewise exercise such authority in any case wherein such authority is granted by an order of the judge of the superior court of the county. Such orders may be granted by judges of the superior courts, in their discretion, upon petition of any medical examiner other than a local medical examiner. (Orig. Code 1863, § 567; Code 1868, § 631; Code 1873, § 590; Code 1882, § 590; Penal Code 1895, § 1258; Penal Code 1910, § 1340; Code 1933, § 21-205; Ga. L. 1953, Jan.-Feb. Sess., p. 602, § 21; Ga. L. 1990, p. 1735, § 3.)

Cross references. — Penalty for disinterment of body without good grounds, § 31-21-42.

JUDICIAL DECISIONS

When authority exercisable. — O.C.G.A. § 45-16-45 is not intended to authorize a medical examiner to bring an action seeking disinterment unless the medical examiner is acting in an official capacity. *Wilson v. Wilson*, 257 Ga. 584, 361 S.E.2d 381 (1987).
Cited in *Stephens v. National Gypsum Co.*, 685 F. Supp. 847 (M.D. Ga. 1988).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Dead Bodies, §§ 77-85.
C.J.S. — 25 C.J.S., Dead Bodies, §§ 2, 4.

ALR. — Removal and reinterment of remains, 21 ALR2d 472.
 Power of court to order disinterment and

autopsy or examination for evidential purposes in civil case, 21 ALR2d 538.

Disinterment in criminal cases, 63 ALR3d 1294.

45-16-46. Obtaining of blood sample where person unable to consent; analysis of blood specimens; certified report.

When any person has been admitted to a hospital or morgue as a result of any casualty and for any reason whatsoever is unable to give his or her consent to the taking of a sample of blood for analytical purposes, the coroner or peace officer in charge of the investigation of the circumstances surrounding the casualty may notify a medical examiner for the purpose of obtaining a blood sample to test for the presence of intoxicating substances or in the case of a dead body and where appropriate for the presence of infectious agents. The blood may be drawn by the medical examiner or at the medical examiner's direction. The medical examiner or his or her designee shall be entitled to a fee set in accordance with Code Section 35-3-151 for performing these services, which fee shall be paid in the same manner as set out in Code Section 45-16-22. The peace officer may also request any licensed physician, nurse, emergency medical technician, medical or laboratory technician, or other qualified person to withdraw blood for purposes of this Code section, in which event such person shall incur no civil or criminal liability. The medical examiner or the peace officer in charge shall submit the blood specimens to the division for analysis; and a report shall be submitted by the division to the submitting officer. (Ga. L. 1961, p. 437, § 2; Ga. L. 1974, p. 561, § 1; Ga. L. 1982, p. 959, §§ 1, 2; Ga. L. 1984, p. 812, § 7; Ga. L. 1989, p. 829, § 2; Ga. L. 1990, p. 1735, § 3; Ga. L. 1997, p. 1421, § 10.)

Cross references. — Chemical tests for alcohol or drugs in blood of person charged with driving under influence of alcohol or drugs, § 40-6-392. Operation of watercraft while under the influence of alcohol or drugs, § 52-7-12.

Editor's notes. — Ga. L. 1997, p. 1421, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Forensic Sciences Act of 1997.'"

JUDICIAL DECISIONS

Prior to the 1982 amendment, a blood sample could only be taken by a medical examiner or a designee; however, if O.C.G.A. § 40-5-55 was also applicable it would be read conjunctively with O.C.G.A. § 40-6-392 so that the results of a blood test taken by a lab technician who was not the medical examiner's designee could still be presented in court. *Epps v. State*, 169 Ga. App. 157, 312 S.E.2d 146 (1983), overruling *Wilson v. State*, 147 Ga. App. 560, 249 S.E.2d 361 (1978).

A foundation is necessary to show the

identity of the sample tested with decedent and the chain of custody to render the report admissible as relevant evidence. *Elliott v. Leavitt*, 122 Ga. App. 622, 178 S.E.2d 268 (1970).

Cited in *Pittman v. State*, 110 Ga. App. 625, 139 S.E.2d 507 (1964); *Interstate Life & Accident Ins. Co. v. Whitlock*, 112 Ga. App. 212, 144 S.E.2d 532 (1965); *Mission Ins. Co. v. Ware*, 143 Ga. App. 550, 239 S.E.2d 162 (1977); *Stripling v. Godfrey*, 143 Ga. App. 742, 240 S.E.2d 145 (1977); *Wilson v. State*, 147 Ga. App. 560, 249 S.E.2d 361 (1978).

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No violation of constitutional rights. — When a medical examiner, acting in accordance with the provisions of O.C.G.A. § 45-16-46, extracts a blood sample from a person who has been involved in a casualty and is unable to give consent to such taking, the examiner does not violate any of the constitutional prohibitions against self-incrimination, as embodied in the fifth amendment and implied through the due process clause of the fourteenth amendment to the state, or the fourth amendment prohibition against unreasonable searches and seizures, as applied through the fourteenth amendment to state prosecutions. 1968 Op. Att’y Gen. No. 68-201.

Protection from civil liability. — A medical examiner who acts pursuant to the authority of O.C.G.A. § 45-16-47 is not subject to civil

liability when said examiner takes a blood specimen from a person killed in a casualty. 1968 Op. Att’y Gen. No. 68-201.

A medical examiner who, for analytical purposes, draws a blood sample from a person at the direction of the peace officer in charge of the investigation, and pursuant to the authority and under the conditions set forth in O.C.G.A. § 45-16-47, is protected from civil liability under O.C.G.A. § 51-11-1. 1978 Op. Att’y Gen. No. 78-61.

Coroner cannot consent to drawing of blood for test for intoxicating substances. — Coroner does not have authority under O.C.G.A. § 45-16-47 to direct medical examiner to take blood from dead body for purpose of testing for intoxicating substances. 1980 Op. Att’y Gen. No. U80-56.

45-16-47. Penalty for violation of article.

Except as provided in Code Section 45-16-30, any person who violates this article shall be guilty of a misdemeanor. (Ga. L. 1960, p. 1009, § 9; Ga. L. 1990, p. 1735, § 3.)

45-16-48. Authorization of coroner’s employment of court reporter.

A coroner may be authorized to employ, at his discretion, a court reporter who is certified under Article 2 of Chapter 14 of Title 15, “The Georgia Court Reporting Act,” to record the proceedings of any inquest. The cost of acquiring the services of a certified court reporter shall be paid from the funds of the county where the inquest is held. (Code 1981, § 45-16-48, enacted by Ga. L. 1984, p. 812, § 8; Ga. L. 1990, p. 1735, § 3.)

45-16-49. Fees.

The fees heretofore authorized to be paid in cases arising under this article prior to May 1, 1997, shall continue to be paid at the rate specified therein until such time as the Board of Public Safety promulgates rules prescribing such fees as provided by paragraph (5) of Code Section 35-3-151. (Code 1981, § 45-16-49, enacted by Ga. L. 1998, p. 128, § 45.)

Editor’s notes. — This Code section as enacted by Ga. L. 1998, p. 128, § 45, is a codification of Ga. L. 1997, p. 1421, § 11(b).

ARTICLE 3

GEORGIA CORONER'S TRAINING COUNCIL

45-16-60. Short title.

This article shall be known as "The Georgia Coroner's Training Council Act." (Code 1981, § 45-16-60, enacted by Ga. L. 1985, p. 797, § 1.)

45-16-61. Definitions.

As used in this article, the term:

(1) "Certified coroner" means a coroner who has the appropriate required certificate of training issued by the council on file with the Board of Public Safety.

(2) "Coroner" means any person appointed or elected in a county to serve as coroner or deputy coroner.

(3) "Council" means the Georgia Coroner's Training Council.

(4) "School" means any school, college, university, academy, or training program approved by the council and the Board of Public Safety which offers basic, in-service, advanced, specialized, or continuing training, or a combination thereof, and includes within its meaning a combination of course curriculum, instructors, and facilities which meets the standards required by the council. (Code 1981, § 45-16-61, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1990, p. 8, § 45.)

45-16-62. Council established; membership; terms of office; curriculum advisory committee; filling of vacancies.

(a) There is established a council which shall be known and designated as the "Georgia Coroner's Training Council" which shall be composed of the superintendent of the Georgia Police Academy or his designee, which member shall not be a voting member; five coroners appointed by the Board of Public Safety, three of whom will be selected from a list of five persons recommended by the Georgia Coroner's Association; and one physician trained in forensic pathology and appointed by the Board of Public Safety, which physician member shall not be a voting member of the council but shall advise the council regarding the training course curriculum for coroners. The term of office of the physician member appointed in 1990 shall begin September 1, 1990, and that and all subsequent terms for that office shall be for four years and until the appointment and qualification of a successor. The five coroners appointed shall serve for terms of four years. The term of office of the member initially appointed in 1987 shall begin September 1, 1987. Upon the expiration of a member's term of

office, such member shall continue to serve on the council until his successor is appointed and qualified. Any person, other than the physician member, appointed to the council who ceases to serve as a coroner shall be ineligible to continue service on the council. The Georgia Police Academy shall establish a curriculum advisory committee to provide information beneficial to the development of courses at the Georgia Police Academy. Members of the committee will be selected by the superintendent of the Georgia Police Academy.

(b) Membership on the council does not constitute public office, and no member shall be disqualified from holding office by reason of his membership.

(c) Vacancies on the council shall be filled as provided in subsection (a) of this Code section for the remainder of the unexpired term. (Code 1981, § 45-16-62, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1987, p. 340, § 1; Ga. L. 1990, p. 333, § 2; Ga. L. 1990, p. 1735, § 4.)

45-16-63. Oath of office; issuance of certificates of appointment.

Immediately and before entering upon the duties of office, the members of the council shall take the oath of office and shall file the same with the Board of Public Safety, which, upon receiving the oath of office, shall issue to each member a certificate of appointment. (Code 1981, § 45-16-63, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1986, p. 10, § 45.)

45-16-64. Council officers; quorum; record keeping; annual reports.

(a) The council at its initial meeting, which shall be held promptly after the appointment of its members, shall elect from among its members a chairman and a vice-chairman who shall serve until the first meeting in the succeeding year. Thereafter, the chairman and the vice-chairman shall be elected at the first meeting of each calendar year.

(b) The superintendent of the Georgia Police Academy or his designee shall serve as secretary to the council.

(c) A simple majority of the councilmembers shall constitute a quorum for the transaction of business.

(d) The council shall maintain minutes of its meetings and such other records as it deems necessary.

(e) The council shall report at least annually to the Board of Public Safety and to the General Assembly as to its activities. (Code 1981, § 45-16-64, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1987, p. 340, § 2; Ga. L. 1990, p. 1967, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted “councilmembers” for “council members” in subsection (c).

45-16-65. Powers and duties of council generally.

The council is vested with the following functions, powers, and responsibilities:

(1) To make all the necessary rules and regulations to carry out this article;

(2) To cooperate with and secure the cooperation of every department, agency, or instrumentality of the state government or its political subdivisions in furtherance of the purposes of this article;

(3) To approve schools and to prescribe minimum qualifications for instructors at approved schools;

(4) To issue a certificate of certification to any coroner satisfactorily complying with an approved training program;

(5) To withdraw or suspend the certification of any coroner who has performed or is performing the duties of a coroner in violation of this chapter;

(6) To do any and all things necessary or convenient to enable it wholly and adequately to perform its duties and to exercise the power granted to it; and

(7) To prescribe, by rules and regulations, the minimum requirements for curricula and standards composing the initial in-service, advanced, specialized, and continuing training courses for certification. (Code 1981, § 45-16-65, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1990, p. 333, § 3.)

45-16-66. Annual training requirement for certified coroners; fees.

(a) In order to maintain the status of a certified coroner, each person certified as such shall complete such additional training per annum during each year in which he or she serves as coroner as provided by the Georgia Coroner’s Training Council in its rules and regulations, but such training course shall not be less than 16 hours per year. Each coroner and deputy coroner shall file a certificate of additional training with such council.

(b) No person serving as a coroner shall charge or collect any fee, charge, or cost of any kind for his services, including those fees specified in this article, unless such person is a certified coroner. (Code 1981, § 45-16-66, enacted by Ga. L. 1985, p. 797, § 1; Ga. L. 1989, p. 14, § 45; Ga. L. 1990, p. 333, § 4; Ga. L. 1990, p. 1735, § 5; Ga. L. 1994, p. 356, § 2.)

Cross references. — Participation in training courses, § 45-16-6.

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Number of training hours required. — O.C.G.A. §§ 45-16-6 and 45-16-66(a) should be construed as requiring coroners in Georgia to take 32 hours of training per year, beginning on July 1, 1990; legislation which purported to require 24 hours of training, effective January 1, 1991, was repealed by a subsequent enactment of the General Assembly during the same session. 1990 Op. Att'y Gen. No. 90-41.

45-16-67. Actions to restrain violations of this article.

On its own initiative or on the verified complaint of any person that a person has performed or is performing the duties of coroner in violation of this article, the council may file an action seeking equitable relief in its own name in the superior court of any county in this state having jurisdiction of such person. Such action shall allege the facts and pray for a temporary restraining order and temporary injunction against such person restraining him from violating this article. Upon proof thereof, the court shall issue a restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that the plaintiff has no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other remedy which the council has. (Code 1981, § 45-16-67, enacted by Ga. L. 1985, p. 797, § 1.)

ARTICLE 4

OFFICE OF MEDICAL EXAMINER

45-16-80. Abolition of office of coroner; qualifications, appointment, compensation, powers, and duties of medical examiners.

(a) In any county of this state the General Assembly by local law is authorized to abolish the office of coroner and establish in lieu thereof the office of medical examiner, which medical examiner shall have the qualifications, powers, and duties provided in this Code section, and who shall be appointed and compensated and have the expenses of office paid as provided in this Code section. The local law abolishing the office of coroner shall specify the effective date of such abolition, which date shall be the date the office of medical examiner is established for the county to which that local law is applicable.

(b) A local law abolishing the office of coroner pursuant to this Code section shall comply with the provisions of Code Section 1-3-11, requiring approval in referendums to abolish certain offices.

(c) To be eligible for the office of medical examiner, as established pursuant to this Code section, a person shall:

(1) Have a doctor of medicine degree and be licensed to practice medicine under the provisions of Chapter 34 of Title 43;

(2) Be eligible for certification by the American Board of Pathology; and

(3) Have at least one year of medico-legal training or one year of active experience in a scientific field in which legal or judicial procedures are involved at the county, state, or federal level.

(d) The requirements for medical examiners established pursuant to paragraphs (2) and (3) of subsection (c) of this Code section may be waived by the governing authority of any county in which the office of medical examiner is established pursuant to this Code section but may not be waived for any person for a longer period than one year.

(e) The medical examiner for any county in which the office of medical examiner is established pursuant to this Code section shall be appointed by the governing authority of that county, shall serve at the pleasure of that governing authority, shall be compensated in an amount determined by that governing authority, and all expenses of the office of such medical examiner shall, subject to county budgetary limitations, be paid from the general funds of that county.

(f) All of the functions, powers, rights, and duties of and heretofore exercised by the coroner of a county for which is established the office of medical examiner pursuant to this Code section with reference to post-mortem examinations and autopsies shall be performed and exercised by the medical examiner of that county, except that medical examiner shall have no authority to summon and impanel a jury to hold inquests.

(g) A medical examiner whose office is established for a county pursuant to this Code section shall be authorized to perform all of the functions prescribed for a coroner under the provisions of Article 2 of this chapter, the "Georgia Death Investigation Act," except that medical examiner shall have no authority to summon and impanel a jury to hold inquests.

(h) The provisions of Article 2 of this chapter, the "Georgia Death Investigation Act," including but not limited to the penalty provisions, shall apply in all cases regarding a medical examiner whose office is established pursuant to this Code section, except the provisions relating to the holding of inquests shall not apply.

(i) A medical examiner whose office is established for a county pursuant to this Code section shall not be required to meet any county residency requirements established by Code Section 45-2-1.

(j) Nothing in this Code section shall be construed to affect any medical examiner whose office was established or authorized by any amendment to the Constitution continued pursuant to Article XI, Section I, Paragraph IV of the Constitution. (Code 1981, § 45-16-80, enacted by Ga. L. 1988, p. 722, § 2; Ga. L. 1992, p. 6, § 45; Ga. L. 1993, p. 91, § 45.)

CHAPTER 17

NOTARIES PUBLIC

Article 1

General Provisions

Sec.		Sec.	
45-17-1.	Definitions.	45-17-11.	Fees of notaries.
45-17-1.1.	Power to appoint notaries public.	45-17-12.	Authority of notaries who are stockholders, directors, officers, or employees of banks or other corporations to witness execution of written instruments.
45-17-2.	Qualifications of notaries.	45-17-13.	Change of residence, address, or name.
45-17-2.1.	Application to be a notary; endorsements and declarations.	45-17-14.	Notice of loss or theft of notarial seal.
45-17-2.2.	Application information to be matter of public record.	45-17-15.	Revocation of commission; denial of reappointment.
45-17-2.3.	Grant or denial of commission or recommission; grounds; unauthorized practice of law.	45-17-16.	Revocation of commission; return of papers; destruction of seal.
45-17-3.	Oath of office.	45-17-17.	Resignation of commission; return of papers; destruction of seal.
45-17-4.	Payment of fees to court clerk and Secretary of State; Secretary of State to keep record of notaries appointed; reappointment.	45-17-18.	Destruction of seal upon expiration or denial of renewal of commission.
45-17-5.	Term of office; revocation; renewal of commission; issuance of certificates of appointment; record of appointments; duplicate original of certificate as prerequisite to obtaining seal; holding self out as or exercising powers of notary without commission.	45-17-19.	Authenticity of official signature and term of office; fees; apostille.
45-17-6.	Seal of office.	45-17-20.	Penalty; prosecution of violations of article.
45-17-7.	Commissioning of nonresidents as notaries; powers and duties.		
45-17-8.	Powers and duties generally.		
45-17-8.1.	Signature and date of notarial act.		
45-17-8.2.	Misrepresentation prohibited; required notice; posting of schedule of fees; penalty provision.		
45-17-9.	Where notarial acts may be exercised.		
45-17-10.	Notaries not to issue attachments or garnishments or approve bonds for such purpose; not to issue summons in dispossessory case; may attest affidavit in attachment, garnishment, or dispossessory action.		

Article 2

Officers of Armed Forces as Ex Officio Notaries

45-17-30.	Commissioned officers of armed services constituted as ex officio notaries; authority generally; effect of acts generally; no seal required.
45-17-31.	Persons authorized to have notarial acts performed by commissioned officers.
45-17-32.	Validity and effect of notarial acts.
45-17-33.	Sufficiency of certification generally; effect of failure to state place of execution or acknowledgment.
45-17-34.	Signature, rank, and branch of officer as proof of authority; action by officer as prima-facie evidence.

Cross references. — Criminal penalty for making false acknowledgments, § 16-10-7.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1984, p. 1105, § 1, effective July 1, 1985, repealed the Code sections formerly codified at this article and enacted the current article. The effect of this

repeal and reenactment was to amend the existing Code sections in this article (or restate them without change) and to enact certain new Code sections.

45-17-1. Definitions.

As used in this article, the term:

(1) “Attesting” and “attestation” are synonymous and mean the notarial act of witnessing or attesting a signature or execution of a deed or other written instrument, where such notarial act does not involve the taking of an acknowledgment, the administering of an oath or affirmation, the taking of a verification, or the certification of a copy.

(2) “Notarial act” means any act that a notary public is authorized by law to perform and includes, without limitation, attestation, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon an oath or affirmation, and the certification of a copy.

(3) “Notarial certificate” means the notary’s documentation of a notarial act. (Code 1981, § 45-17-1, enacted by Ga. L. 1986, p. 1446, § 1; Ga. L. 1990, p. 8, § 45.)

Editor's notes. — Ga. L. 1986, p. 1446, § 1, effective April 11, 1986, in effect redesignated former § 45-17-1 as § 45-17-1.1.

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

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Cited in Lewy v. Beazley, 270 Ga. 11, 507 S.E.2d 721 (1998).

45-17-1.1. Power to appoint notaries public.

The power to appoint notaries public is vested in the clerks of the superior courts and may be exercised by them at any time. (Orig. Code 1863, § 1446; Ga. L. 1868, p. 130, § 1; Code 1868, § 1503; Code 1873, § 1497; Code 1882, § 1497; Civil Code 1895, § 498; Civil Code 1910, § 616; Code 1933, § 71-101; Ga. L. 1947, p. 1108, § 1; Ga. L. 1949, p. 1940, § 1; Code 1981, § 45-17-1; Ga. L. 1984, p. 1105, § 1; Code 1981, § 45-17-1.1, as redesignated by Ga. L. 1986, p. 1446, § 1.)

Editor's notes. — Ga. L. 1986, p. 1446, § 1, effective April 11, 1986, in effect red-

esignated, without change, former § 45-17-1 as this Code section.

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Proof of appointment. — Where a writing has been admitted to record upon the probate of an alleged notary, and it is proved that the minutes fail to show an order appointing the notary, the burden is upon the

party offering the writing to show that the alleged officer was legally appointed. *Perry v. Kennon*, 16 Ga. App. 545, 85 S.E. 821 (1915).

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Appointment by deputy clerk. — Because O.C.G.A. § 15-6-59 provides that the powers and duties of a deputy clerk shall be the same as those of the clerk, under O.C.G.A.

§ 45-17-1.1 a deputy clerk may appoint a notary public in the same manner as the clerk; no other person would have this authority. 1958-59 Op. Att'y Gen. p. 60.

45-17-2. Qualifications of notaries.

(a) Any individual applying for appointment to be a notary public must be:

- (1) At least 18 years old;
- (2) A resident of this state;
- (3) A resident of the county from which such individual is appointed; and
- (4) Able to read and write the English language.

(b) The qualifications of paragraphs (2) and (3) of subsection (a) of this Code section shall not apply to any individual applying for appointment as a notary public under the provisions of Code Section 45-17-7. (Orig. Code 1863, § 1449; Code 1868, § 1506; Code 1873, § 1500; Code 1882, § 1500; Civil Code 1895, § 501; Civil Code 1910, § 619; Code 1933, § 71-102; Ga. L. 1947, p. 1108, § 1; Ga. L. 1949, p. 1940, § 2; Ga. L. 1953, Nov-Dec. Sess., p. 330, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, § 1; Ga. L. 1986, p. 1446, § 2.)

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Duration of residency unspecified. — O.C.G.A. § 45-17-2 states that a person must be a resident of Georgia, but does not specify any particular length of time for such residency; therefore, the question of residence is one which must be determined from the facts and circumstances in each particular case. 1958-59 Op. Att'y Gen. p. 60.

Notaries public for the state at large are no longer in existence, but under present law notaries public are commissioned by the clerk of the superior court in the county of their residence. 1952-53 Op. Att'y Gen. p. 387.

45-17-2.1. Application to be a notary; endorsements and declarations.

(a) Any individual desiring to be a notary public shall submit application to the clerk of superior court of the county in which the individual resides or, when applying under the provisions of Code Section 45-17-7, to the clerk of superior court of the county in which the individual works or has a business. The applicant shall sign and swear or affirm as outlined in paragraph (2) of subsection (b) of this Code section to the truthfulness of the application which shall state:

- (1) That the applicant resides or works or has a business in the county of application and the address of the residence or business;
- (2) That the applicant is at least 18 years old;
- (3) That the applicant can read and write the English language;
- (4) All denials, revocations, suspensions, restrictions, or resignations of a notary commission held by the applicant; and
- (5) All criminal convictions of the applicant, including any plea of nolo contendere, except minor traffic violations.

(b) In addition to the application required in subsection (a) of this Code section, every applicant for appointment as notary public shall also submit to the clerk of superior court of the county in which the individual makes application:

- (1) Endorsements from two persons who are not relatives of the applicant, who are at least 18 years old, and who reside in the county in which the individual makes application. The endorsement shall be in the following form:

I, _____ (name of endorser), being 18 years of age or older and a resident of _____ (name of county), believe the applicant for a notary public commission, _____ (name of applicant), who is not related to myself, to be a person of integrity, of good moral character, and capable of performing notarial acts.

(Signature of endorser) (date)

(address of endorser)

- (2) A declaration of applicant which shall have been signed in the presence of a commissioned notary public of this state. The declaration of applicant shall be in the following form:

I, _____ (name of applicant), do solemnly swear or affirm under penalty of perjury that the personal information I have written in this application is true, complete, and correct.

(Signature of applicant)

State of _____

County of _____

On this _____ day of _____, _____, before me appeared, _____, the person who signed the preceding declaration of applicant in my presence and who swore or affirmed that _____ (he/she) understood the document and freely declared it to be truthful.

(Official signature of the notary)

(Official seal of the notary)

(Code 1981, § 45-17-2.1, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, §§ 2, 3; Ga. L. 1986, p. 10, § 45; Ga. L. 1986, p. 1446, § 3; Ga. L. 1999, p. 81, § 45; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, inserted “of” preceding “good moral character” in the form in paragraph (b)(1).

45-17-2.2. Application information to be matter of public record.

The information in the application for appointment and commissioning as a notary public shall be a matter of public record. (Code 1981, § 45-17-2.2, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, § 4.)

45-17-2.3. Grant or denial of commission or recommission; grounds; unauthorized practice of law.

(a) After an applicant submits to the clerk of superior court of the county the application, endorsements, and declaration of applicant as required in Code Section 45-17-2.1, the clerk of superior court shall either grant or deny a commission or recommission as a notary public within ten days following the applicant’s submission of the necessary documents.

(b) The clerk of superior court may in his or her discretion deny a commission or recommission to an applicant based on any of the following grounds:

- (1) The applicant’s criminal history;

(2) Revocation, suspension, or restriction of any notary commission or professional license issued to the applicant by this or any other state;

(3) The commission in this or any state of any act enumerated in subsection (a) of Code Section 45-17-15, whether or not criminal penalties or commission suspension or revocation resulted; or

(4) The applicant is found by the State Bar of Georgia, a court of this state, or a court of any other state to have engaged in the unauthorized practice of law.

(c) Any applicant who is denied a notarial commission or recommission by the clerk of superior court shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury. (Code 1981, § 45-17-2.3, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1992, p. 6, § 45; Ga. L. 2002, p. 630, § 1.)

The 2002 amendment, effective July 1, 2002, inserted “or recommission” throughout this Code section; in subsection (b), inserted “or her” in the introductory paragraph, deleted “or” at the end of paragraph

(b)(2), substituted “; or” for a period at the end of paragraph (b)(3), and added paragraph (b)(4).

Cross references. — Unauthorized practice of law forbidden, § 15-19-51.

45-17-3. Oath of office.

Before entering on the duties of his office, each notary public shall take and subscribe before the clerk of the superior court the following oath, which shall be entered on his minutes:

“I, _____, do solemnly swear or affirm that I will well and truly perform the duties of a notary public to the best of my ability; and I further swear or affirm that I am not the holder of any public money belonging to the state and unaccounted for, so help me God.”

(Orig. Code 1863, § 1447; Ga. L. 1868, p. 130, § 2; Code 1868, § 1504; Code 1873, § 1498; Code 1882, § 1498; Civil Code 1895, § 499; Civil Code 1910, § 617; Code 1933, § 71-103; Ga. L. 1947, p. 1108, § 1; Ga. L. 1984, p. 1105, § 1.)

45-17-4. Payment of fees to court clerk and Secretary of State; Secretary of State to keep record of notaries appointed; reappointment.

Before a certificate shall be issued to a notary public, he or she shall pay to the clerk of the superior court the sum prescribed by Code Section 15-6-77, relating to fees of clerks of the superior courts, from which amount the clerk shall be entitled to cover his or her services in issuing the certificate of appointment as notary public, administering the oath, and recording the same. The amount by which the sum prescribed by Code

Section 15-6-77 exceeds the amount which the clerk is required by this Code section to forward to the Georgia Superior Court Clerks' Cooperative Authority is what the clerk shall use to cover his or her services. The clerk shall immediately send a copy of the certificate of appointment, under his or her seal of office, and \$2.00 to the Georgia Superior Court Clerks' Cooperative Authority which shall keep a record showing the names of the notaries public appointed with their addresses, signatures, ages, sex, and the terms for which their commissions run; and such amount shall cover the cost of the Georgia Superior Court Clerks' Cooperative Authority in keeping such records. On reappointment as notaries public, the sum prescribed by Code Section 15-6-77 shall be paid to the clerk of the superior court and disbursed in the same manner as the fee for the original appointment is disbursed under this Code section. (Ga. L. 1878-79, p. 80, § 1; Code 1882, § 1503a; Civil Code 1895, § 507; Civil Code 1910, § 625; Code 1933, § 71-105; Ga. L. 1947, p. 1108, § 1; Ga. L. 1970, p. 497, § 6; Ga. L. 1971, p. 699, § 4; Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 1.)

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Secretary of State's responsibilities. — duties of the Secretary of State to maintain records of notaries public. 1996 Op. Att'y Gen. No. 96-11.

45-17-5. Term of office; revocation; renewal of commission; issuance of certificates of appointment; record of appointments; duplicate original of certificate as prerequisite to obtaining seal; holding self out as or exercising powers of notary without commission.

(a) Each notary public shall hold office for four years, subject to revocation at any time by the clerk of the superior court, at the end of which time, on petition, his commission may be renewed by order of the clerk for a like term. Renewal of a notary public commission may be done in person or by mail at the discretion of the clerk of superior court. The clerk of the superior court shall issue to each notary public a certificate of his appointment and qualifications, which certificate shall contain the name, address, age, and sex of the appointee, the date the certificate was issued, and the term for which the appointment runs. The clerk shall also keep a record of the names, addresses, signatures, ages, sex, and the terms of all notaries public whom he appoints.

(b) At the time the clerk of the superior court issues a certificate of appointment as provided in subsection (a) of this Code section, said officer shall also issue to the appointee a duplicate original of such certificate. The presentation of such duplicate original, either by mail or in person, to the supplier of a notary public seal shall be necessary to authorize such supplier to make up a notary public seal and deliver it to the appointee.

(c) It shall be unlawful for any person to hold himself or herself out as a notary public or to exercise the powers of a notary public unless such

person has an unexpired commission as a notary public. (Laws 1824, Cobb's 1851 Digest, p. 210; Code 1863, § 1448; Ga. L. 1868, p. 130, § 2; Code 1868, § 1505; Code 1873, § 1499; Code 1882, § 1499; Civil Code 1895, § 500; Civil Code 1910, § 618; Code 1933, § 71-104; Ga. L. 1947, p. 1108, § 1; Ga. L. 1949, p. 1940, § 1; Ga. L. 1982, p. 1106, § 1; Ga. L. 1983, p. 3, § 34; Ga. L. 1984, p. 1105, § 1.)

Editor's notes. — Ga. L. 1982, p. 1106, § 2, not codified by the General Assembly, provided as follows: "This Act shall not

invalidate any notary public seal lawfully issued and possessed prior to the effective date of this Act [November 1, 1982]."

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Holds over until successor appointed. — Notaries public are public officers, whose duties, oaths and powers are prescribed by law. They are appointed for four years, but upon the expiration of that time, a notary and the notary's office do not cease, but the notary continues to hold that position until a successor is appointed, or until the notary is removed. *Smith & Bondurant v. Meador*, 74 Ga. 416, 58 Am. R. 438 (1885).

Notarial acts after end of term. — If, after the expiration of the term for which a notary was appointed and before that fact was discovered, the notary attested an affidavit, both parties acting in good faith, if not an officer de jure, the notary would, in such transaction, be an officer de facto, and the attestation would not be void. *Smith & Bondurant v. Meador*, 74 Ga. 416, 58 Am. R. 438 (1885).

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Usually a notary public may be classified as a public official. 1969 Op. Att'y Gen. No. 69-309.

RESEARCH REFERENCES

ALR. — Notary public as an officer, 79 ALR 449.

45-17-6. Seal of office.

(a)(1) For the authentication of his notarial acts each notary public must provide a seal of office, which seal shall have for its impression his name, the words "Notary Public," the name of the state, and the county of his residence; or it shall have for its impression his name and the words "Notary Public, Georgia, State at Large." Notaries commissioned or renewing their commission after July 1, 1985, shall provide a seal of office which shall have for its impression the notary's name, the words "Notary Public," the name of the state, and the county of his appointment. The embossment of notarial certificates by the notary's seal shall be authorized but not necessary, and the use of a rubber or other type stamp shall be sufficient for imprinting the notary's seal. A scrawl shall not be a sufficient notary seal. An official notarial act must be documented by the notary's seal.

(2) No document executed prior to July 1, 1986, which would otherwise be eligible for recording in the real property records maintained by any clerk of superior court or constitute record notice or actual notice of any matter to any person shall be ineligible for recording or fail to constitute such notice because of noncompliance with the requirement that the document contain a notary seal.

(b) It shall be unlawful for any person, firm, or corporation to supply a notary public seal to any person unless the person has presented the duplicate original of the certificate commissioning the person as a notary public. It shall be unlawful for any person to order or obtain a notary public seal unless such person is commissioned as a notary public. (Ga. L. 1863-64, p. 58, § 3; Code 1863, § 1452; Code 1868, § 1509; Code 1873, § 1503; Code 1882, § 1503; Civil Code 1895, § 505; Civil Code 1910, § 623; Code 1933, § 71-107; Ga. L. 1947, p. 1108, § 1; Ga. L. 1949, p. 1940, § 3; Ga. L. 1952, p. 456, § 1; Ga. L. 1982, p. 1106, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, § 5; Ga. L. 1986, p. 1446, § 4.)

Cross references. — Requirement of seal for notary's attestation of deeds executed outside state, § 44-2-21.

Editor's notes. — Ga. L. 1952, p. 456, § 2, provides that all deeds executed after the passage of the Act approved February 25, 1949 (Ga. L. 1949, p. 940) are declared to be valid, if executed as otherwise required by law even though the same do not have the seal of the notary thereon.

Ga. L. 1986, p. 1446, § 10, not codified by the General Assembly, provided: "This Act shall become effective upon its approval by

the Governor [approved April 11, 1986] or upon its becoming law without such approval. It is expressly declared that the curative provisions of paragraph (2) of subsection (a) of Code Section 45-17-6 and of subsection (c) of Code Section 45-17-8.1, as enacted by this Act, are intended to have retroactive application except to the extent that such retroactive application would unconstitutionally impair any vested right."

Law reviews. — For article surveying real property law in 1984-1985, see 37 Mercer L. Rev. 343 (1985).

JUDICIAL DECISIONS

The seal of the notary public is prima facie evidence that the legal formalities of the notary public's appointment before the proper person have been complied with, and is prima facie evidence of the authority of the notary public to administer oaths; however, these presumptions are rebuttable. *Brooks v. State*, 63 Ga. App. 575, 11 S.E.2d 688 (1940).

Further authentication not required. — The seal of the notary public being evidence of the genuineness of the notary's signature and of the notary's official character, no further authentication is required. *Brooks v. State*, 63 Ga. App. 575, 11 S.E.2d 688 (1940).

Seal not necessary on probate of deed. — It is not necessary that a notary public shall affix a seal to the probate of a deed by a

subscribing witness. *Nichols v. Hampton*, 46 Ga. 253 (1872).

Seal not necessary on bill in equity. — In attesting an affidavit to a bill in equity, a notary public need not affix seal. It was not such a notarial act, under O.C.G.A. § 45-17-6 as requires a seal for its authentication. *Chappell v. Boud*, 56 Ga. 578 (1876).

Seal not necessary on affidavit for bail in trover. — The notary need not attest an affidavit for bail in trover under a notarial seal or any other seal. Only notarial acts require a seal. *Jowers v. Blandy*, 58 Ga. 379 (1877).

Absence of seal from original affidavit could be cured by filing a supplemental affidavit. To constitute a complete affidavit, three essential features are requisite: first,

written oath embodying facts sworn to by affiant; second, signature of affiant thereto; and third, jurat or attestation, by officer authorized to administer oath, that affidavit was actually sworn to and subscribed before

that officer by the affiant. *Glenn v. Metropolitan Atlanta Rapid Transit Auth.*, 158 Ga. App. 98, 279 S.E.2d 481 (1981).

Cited in *Fabe v. Floyd*, 199 Ga. App. 322, 405 S.E.2d 265 (1991).

OPINIONS OF THE ATTORNEY GENERAL

Use of title. — A notary public does not use notary seal in the attestation of specified papers not requiring such use; a notary's title should be written under the notary's name, but where the seal is used it probably is not necessary for the notary to show such title. 1952-53 Op. Att'y Gen. p. 387.

Election by notary of words used in seal. — The language of O.C.G.A. § 45-17-6 is clear and unambiguous; it is expressed in the disjunctive, and makes no distinction as to which notaries may use the words "State

at Large," and which may use the words designating their county; the plain words of the statute give the election to any notary. In so doing, it is quite possible that the General Assembly intended that a notary whose activities, because of the notary's particular situation, would be confined to one county, would desire to identify with that particular county, whereas a notary whose situation would require travel over the state would desire to use the words "State at Large." 1957 Op. Att'y Gen. p. 192.

RESEARCH REFERENCES

ALR. — What amounts to notary's seal, 7 ALR 1663.

45-17-7. Commissioning of nonresidents as notaries; powers and duties.

(a) Any person who is a resident of a state bordering on the State of Georgia and who carries on a business or profession in the State of Georgia or who is regularly employed in the State of Georgia may be commissioned as a notary public by the clerk of the superior court of the county in which the person carries on said profession, business, or employment.

(b) Such person wishing to be commissioned as a notary public must meet all the requirements of Code Section 45-17-2, as it applies to this Code section.

(c) Such person shall submit the application, endorsements, and declaration of applicant as required by Code Section 45-17-2.1 to the clerk of superior court in the county in which such person carries on such profession, business, or employment. The clerk of superior court shall approve or deny such application based on the provisions of Code Section 45-17-2.3. Upon approval and payment of the usual fees to the clerk, the applicant shall be issued a certificate as a notary public of this state and shall be authorized to perform all of the duties and exercise all of the powers and authorities relating to notaries public who are residents of this state. (Ga. L. 1960, p. 1051, §§ 1-3; Ga. L. 1984, p. 1105, § 1.)

45-17-8. Powers and duties generally.

(a) Notaries public shall have authority to:

(1) Witness or attest signature or execution of deeds and other written instruments;

(2) Take acknowledgments;

(3) Administer oaths and affirmations in all matters incidental to their duties as commercial officers and all other oaths and affirmations which are not by law required to be administered by a particular officer;

(4) Witness affidavits upon oath or affirmation;

(5) Take verifications upon oath or affirmation;

(6) Make certified copies, provided that the document presented for copying is an original document and is neither a public record nor a publicly recorded document certified copies of which are available from an official source other than a notary and provided that the document was photocopied under supervision of the notary; and

(7) Perform such other acts as they are authorized to perform by other laws of this state.

(b) No notary shall be obligated to perform a notarial act if he feels such act is:

(1) For a transaction which the notary knows or suspects is illegal, false, or deceptive;

(2) For a person who is being coerced;

(3) For a person whose demeanor causes compelling doubts about whether the person knows the consequences of the transaction requiring the notarial act; or

(4) In situations which impugn and compromise the notary's impartiality, as specified in subsection (c) of this Code section.

(c) A notary shall be disqualified from performing a notarial act in the following situations which impugn and compromise the notary's impartiality:

(1) When the notary is a signer of the document which is to be notarized; or

(2) When the notary is a party to the document or transaction for which the notarial act is required.

(d) A notary public shall not execute a notarial certificate containing a statement known by the notary to be false nor perform any action with an intent to deceive or defraud.

(e) In performing any notarial act, a notary public shall confirm the identity of the document signer, oath taker, or affirmant based on personal knowledge or on satisfactory evidence.

(f) The signature of a notary public documenting a notarial act shall not be evidence to show that such notary public had knowledge of the contents of the document so signed, other than those specific contents which constitute the signature, execution, acknowledgment, oath, affirmation, affidavit, verification, or other act which the signature of that notary public documents, nor is a certification by a notary public that a document is a certified or true copy of an original document evidence to show that such notary public had knowledge of the contents of the document so certified. (Ga. L. 1863-64, p. 58, § 2; Code 1863, § 1451; Code 1868, § 1508; Code 1873, § 1502; Code 1882, § 1502; Civil Code 1895, § 503; Civil Code 1910, § 621; Code 1933, § 71-108; Ga. L. 1947, p. 1108, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1986, p. 1446, §§ 5, 6; Ga. L. 1987, p. 1113, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “acknowledgments” was substituted for “acknowledgements” in paragraph (a)(2).

JUDICIAL DECISIONS

Authority to attest affidavits. — At one time there appears to have been doubt as to the power of notaries to attest affidavits in this state. It was removed by the Act of 1863, codified in O.C.G.A. § 45-17-8. That statute, however, was properly in part declaratory of a power already recognized. *Simpson v. Wicker*, 120 Ga. 418, 47 S.E. 965, 1 Ann. Cas. 542 (1904).

An affidavit to require bail in trover may be made before a notary public. *Jowers v. Blandy*, 58 Ga. 379 (1877).

An affidavit is sufficient as a basis for framing an accusation in a criminal court, although made before a commercial notary public; the question remains, however, whether such an affidavit would furnish a sufficient foundation for the issuance of an arrest warrant. *Mitchell v. State*, 126 Ga. 84, 54 S.E. 931 (1906).

Notaries public do not have authority to administer the oath required for an affidavit on which a dispossessionary warrant is issued. *Young v. Cowles*, 128 Ga. App. 770, 197 S.E.2d 864 (1973).

Action not requiring a seal. — In attesting an affidavit in forma pauperis, accompanying a bill of exceptions, a notary public need not fix a seal, since it is not such a material act, under O.C.G.A. § 45-17-8, as requires a seal for its authentication. *Collins v. State*, 206 Ga. 95, 55 S.E.2d 599 (1949).

Conflict of interest disqualifies notaries.

— Having established themselves as active officers and spokespersons for a recall effort, notaries public became more than generally interested electors. Hence, any recall petition pages with affidavits notarized by the notaries or either of them were properly disregarded. *Howell v. Tidwell*, 258 Ga. 246, 368 S.E.2d 311 (1988).

A notary who circulated part of a nominating petition and also signed the petition was disqualified from notarizing circulators' affidavits on the petition, and it was proper to disqualify those pages with affidavits notarized by such person. *Poppell v. Lanier*, 264 Ga. App. 473, 448 S.E.2d 194 (1994).

Disqualification of notary. — An affidavit, probating a mortgage, taken before the attorney of the mortgagee, who is a notary public, is not a legal affidavit, and a mortgage recorded on such probate is not legally recorded. *Nichols v. Hampton*, 46 Ga. 253 (1872).

Cited in *Dalton City Co. v. Haddock*, 54 Ga. 584 (1875); *Wright v. Davis*, 120 Ga. 670, 48 S.E. 170 (1904); *Shuler v. State*, 125 Ga. 778, 54 S.E. 689 (1906); *Singletary v. Watson*, 136 Ga. 241, 71 S.E. 162 (1911); *Peters v. Hyatt Legal Servs.*, 211 Ga. App. 587, 440 S.E.2d 222 (1993); *Lewy v. Beazley*, 270 Ga. 11, 507 S.E.2d 721 (1998); *Sambor v. Kelley*, 271 Ga. 133, 518 S.E.2d 120 (1999).

OPINIONS OF THE ATTORNEY GENERAL

A wife who is a notary may witness her husband's signature. 1970 Op. Att'y Gen. No. U70-213.

RESEARCH REFERENCES

ALR. — Proof of identity upon which officer certifying to an acknowledgment is justified in acting, 10 ALR 871.

Right of notary who protests paper to change or contradict his certificate, 28 ALR 543.

Sufficiency of certificate of acknowledgment, 29 ALR 919.

Measure of damages for false or incomplete certificate by notary public, 13 ALR3d 1039.

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client, 21 ALR3d 483.

Admissibility, in action against notary public, of evidence as to usual business practice of notary public of identifying person seeking certificate of acknowledgment, 59 ALR3d 1327.

45-17-8.1. Signature and date of notarial act.

(a) Except as otherwise provided in this Code section, in documenting a notarial act, a notary public shall sign on the notarial certification, by hand in ink, only and exactly the name indicated on the notary's commission and shall record on the notarial certification the exact date of the notarial act.

(b) The requirement of subsection (a) of this Code section for recording of the date of the notarial act shall not apply to an attestation of deeds or any other instruments pertaining to real property.

(c) No document executed prior to July 1, 1986, which would otherwise be eligible for recording in the real property records maintained by any clerk of superior court or constitute record notice or actual notice of any matter to any person shall be ineligible for recording or fail to constitute such notice because of noncompliance with the present or any prior requirements of this Code section. (Code 1981, § 45-17-8.1, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 1469, § 6; Ga. L. 1986, p. 1446, § 7.)

Editor's notes. — Ga. L. 1986, p. 1446, § 10, not codified by the General Assembly, provided: "This Act shall become effective upon its approval by the Governor [approved April 11, 1986] or upon its becoming law without such approval. It is expressly declared that the curative provisions of paragraph (2) of subsection (a) of Code Section 45-17-6 and of subsection (c)

of Code Section 45-17-8.1, as enacted by this Act, are intended to have retroactive application except to the extent that such retroactive application would unconstitutionally impair any vested right."

Law reviews. — For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

45-17-8.2. Misrepresentation prohibited; required notice; posting of schedule of fees; penalty provision.

(a) A notary shall not make claims to have or imply he or she has powers, qualifications, rights, or privileges that the office of notary does not authorize, including the powers to counsel on immigration matters and to give legal advice.

(b) A notary who is not an attorney licensed to practice law in this state who advertises the person's services as a notary public in English or any other language, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in every other language used for the advertisement. The notice shall be of a conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF GEORGIA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is made by radio or television, the statement may be modified but must include substantially the same message.

(c) A notary who is not an attorney licensed to practice law in this state is prohibited from representing or advertising that the notary is a "legal consultant" or an expert on legal matters.

(d) A notary who is not an attorney licensed to practice law in this state is prohibited from rendering any service that constitutes the unauthorized practice of law.

(e) A notary required to comply with the provisions of subsection (b) of this Code section shall prominently post at the notary public's place of business a schedule of fees established by law which a notary may charge. The fee schedule shall be written in English and in any non-English language in which the notary services were solicited and shall contain the notice required in subsection (b) of this Code section, unless the notice is otherwise prominently posted at the notary public's place of business.

(f) The Attorney General or prosecuting attorney may seek injunctive relief against any notary public who violates the provisions of this Code section. Nothing in this Code section diminishes the authority of the State Bar of Georgia.

(g) A violation of subsection (c) or (d) of this Code section constitutes a deceptive trade practice under Code Section 10-1-427 in addition to any other penalties provided by law. (Code 1981, § 45-17-8.2, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 2002, p. 630, § 2.)

The 2002 amendment, effective July 1, 2002, designated the existing provisions as subsection (a), inserted "or she" near the beginning of subsection (a), and added subsections (b) through (g).

Cross references. — Unauthorized practice of law forbidden, § 15-19-51.

45-17-9. Where notarial acts may be exercised.

Notarial acts may be exercised in any county in the state. (Orig. Code 1863, § 1450; Code 1868, § 1507; Code 1873, § 1501; Code 1882, § 1501; Civil Code 1895, § 502; Civil Code 1910, § 620; Code 1933, § 71-106; Ga. L. 1947, p. 1108, § 1; Ga. L. 1984, p. 1105, § 1.)

RESEARCH REFERENCES

ALR. — Violation of liquor law as infamous crime or offense involving moral turpitude, 40 ALR 1048; 71 ALR 217.

45-17-10. Notaries not to issue attachments or garnishments or approve bonds for such purpose; not to issue summons in dispossessionary case; may attest affidavit in attachment, garnishment, or dispossessionary action.

It shall not be lawful for notaries public to issue attachments or garnishments, to approve bonds for the purpose of issuing attachments or garnishments, or to issue a summons in a dispossessionary case; but a notary may attest an affidavit in an attachment, garnishment, or dispossessionary action; provided, however, no writ or summons in said matter shall issue without first having judicial approval as provided by law. (Ga. L. 1893, p. 117, § 1; Civil Code 1895, § 504; Civil Code 1910, § 622; Code 1933, § 71-109; Ga. L. 1947, p. 1108, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1986, p. 1446, § 8.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "to issue attachments or garnishments".

JUDICIAL DECISIONS

Garnishment proceedings. — An affidavit, as the basis for the issuance of the summons of garnishment, subscribed to before a notary public, is defective, and the garnishment proceedings are thereby rendered void ab initio. *Thompson v. Reynolds Auto Co.*, 31 Ga. App. 574, 121 S.E. 528 (1924).

Where garnishment or attachment affidavits are subscribed to before unauthorized persons, the proceedings are void ab initio rendering judgments based thereon likewise

void. *Jenkins v. Community Loan & Inv. Corp.*, 120 Ga. App. 543, 171 S.E.2d 654 (1969).

Use of void affidavit as testimony. — Although an affidavit is void as an affidavit verifying the petition for attachment, the judge can consider the same as "testimony," and, if sufficient for this purpose, grant the attachment. *Price v. Cohen, Son & Co.*, 118 Ga. 261, 45 S.E. 225 (1903).

Cited in *Kazakos v. Soteris*, 120 Ga. App.

258, 170 S.E.2d 50 (1969); Marietta Broad-
casting Co. v. Advance Mktg. Research, Inc.,
231 Ga. 13, 200 S.E.2d 134 (1973).

45-17-11. Fees of notaries.

(a) The fees of notaries public shall be as follows:

- (1) Administering an oath in any case \$ 2.00
- (2) Each attendance on any person to make proof as a notary
public and certifying to same 2.00
- (3) Every other certificate 2.00

(b) It shall not be lawful for any notary public to charge a greater sum than \$4.00 for each service performed. Said sum shall include a fee of \$2.00 for performing the notarial act and a fee of \$2.00 for an attendance to make proof as a notary public and certifying to same if such certification, which shall be issued by the clerk of superior court of the county in which the notary public was appointed or the Georgia Superior Court Clerks' Cooperative Authority, is required. Registering shall be paid for by the party who has the service performed. The fee for all official acts which the notary may perform shall be the same as those prescribed for other officers who are likewise permitted to perform them.

(c) A notary public need not charge fees for notarial acts.

(d) A notary public shall inform the person requesting any notarial act, prior to performing the act, the fees permitted for each act. (Laws 1792, Cobb's 1851 Digest, p. 352; Code 1863, § 3628; Code 1868, § 3653; Code 1873, § 3704; Code 1882, § 3704; Civil Code 1895, § 506; Ga. L. 1898, p. 106, § 1; Ga. L. 1904, p. 97, § 1; Civil Code 1910, § 624; Code 1933, § 71-110; Ga. L. 1947, p. 1108, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3.)

RESEARCH REFERENCES

ALR. — Validity and effect of agreement to give bank all, or part, of fees of notary for protesting paper, 25 ALR 170.

45-17-12. Authority of notaries who are stockholders, directors, officers, or employees of banks or other corporations to witness execution of written instruments.

(a) As used in this Code section, the term:

- (1) "Bank" or "other corporation" means a bank or other corporation organized under the laws of this or any other state or the United States.

(2) "Written instrument," without limiting the generality of meaning of such words, means deeds, mortgages, bills of sale to secure debt, deeds to secure debt, deeds of trust, contracts, legal pleadings, affidavits, certificates, or any other like instruments.

(b) It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation. Any such notary public may act and sign as official witness to the execution by any party of any written instrument executed to or by such bank or other corporation. Any such notary public may administer an oath to any other stockholder, director, officer, employee, or agent of such bank or other corporation or may protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation, provided that it shall be unlawful for any notary public to act and sign as official witness to or take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary would be witnessing or acknowledging his own signature as it appears on the instrument either in his capacity as an individual or in his representative capacity with the bank or other corporation or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument. (Ga. L. 1958, p. 313, §§ 1, 2; Ga. L. 1962, p. 104, § 1; Ga. L. 1984, p. 1105, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "acknowl-

edgment" for "acknowledgement" in two places in subsection (b).

RESEARCH REFERENCES

ALR. — Validity and effect of agreement to give bank all, or part, of fees of notary for protesting paper, 25 ALR 170.

Qualification of stockholder of a corpora-

tion or member of association to take acknowledgment of, or attest as notary an instrument to which corporation or association is a party, 51 ALR 1529.

45-17-13. Change of residence, address, or name.

(a) Every notary public shall notify in writing the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, of any change in the notary's residence or business address, whichever was used for the purpose of appointment. The notice shall contain both the old and new addresses and must be received by the clerk of superior court within 30 days of the change.

(b)(1) Every notary public shall notify in writing the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, of any change in the notary's name. The notice

shall contain both the old and new names, the new signature, and any new address and must be received by the clerk of superior court within 30 days of the change.

(2) A notary with a new name may begin to officially sign the new name on notarial certificates when the following steps have been completed:

(A) The notice described in paragraph (1) of this subsection has been received by the appointing clerk of superior court;

(B) A confirmation of the notary's name change has been received from the appointing clerk of superior court; and

(C) A new seal bearing the new name exactly as indicated in the confirmation has been obtained. (Code 1981, § 45-17-13, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3.)

45-17-14. Notice of loss or theft of notarial seal.

Within ten days of the loss or theft of an official notarial seal, the notary public shall send to the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, a written notice of the loss or theft. (Code 1981, § 45-17-14, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3.)

45-17-15. Revocation of commission; denial of reappointment.

(a) The appointing clerk of superior court may by letter, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, revoke the commission or deny the reappointment of any notary public who:

(1) Violates any provision of this chapter;

(2) Performs any notarial act in violation of Code Section 45-17-8;

(3) Is found to have submitted an application or endorsement for a notarial commission containing substantial and significant misstatement or omission of fact;

(4) Ceases to reside or work or have a business in this state; or

(5) Becomes incapable of reading and writing the English language.

(b) Any notary public whose commission has been revoked shall upon demand be allowed a hearing and adjudication before the superior court clerk with a right of de novo appeal to the superior court, such appeal to be determined by the court without the intervention of a jury. (Code 1981, § 45-17-15, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3.)

45-17-16. Revocation of commission; return of papers; destruction of seal.

Within ten days after receiving notice from the appointing clerk of superior court that a notarial commission has been revoked, an individual shall send or deliver to the appointing clerk of superior court all papers of appointment. Such individual shall also destroy the official notarial seal. (Code 1981, § 45-17-16, enacted by Ga. L. 1984, p. 1105, § 1.)

45-17-17. Resignation of commission; return of papers; destruction of seal.

A person who wishes to resign a notarial commission shall send a signed letter of resignation to the appointing clerk of superior court, with a copy to the Georgia Superior Court Clerks' Cooperative Authority, and all papers of appointment. The resigning notary public shall destroy the official notarial seal. (Code 1981, § 45-17-17, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 3.)

45-17-18. Destruction of seal upon expiration or denial of renewal of commission.

A notary public whose commission expires and who does not apply for renewal of such commission or whose application for renewal of a commission is denied shall destroy the official notary seal. (Code 1981, § 45-17-18, enacted by Ga. L. 1984, p. 1105, § 1.)

45-17-19. Authenticity of official signature and term of office; fees; apostille.

(a) The authenticity of the official signature and term of office of a notary public may be evidenced by:

(1) A certificate of authority from the appointing clerk of superior court or the Georgia Superior Court Clerks' Cooperative Authority; or

(2) An apostille in the exact form prescribed by the Hague Convention from the Secretary of State, provided that an apostille shall be obtained only from the Georgia Superior Court Clerks' Cooperative Authority on or after the thirtieth day following the designation, by the United States Department of State, of the Georgia Superior Court Clerks' Cooperative Authority as an authority in the United States competent to issue an apostille.

(b) The fee for a certificate of authority shall be \$2.00. The fee for an apostille shall be \$3.00.

(c) An apostille as specified by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents shall be attached to any document requiring authentication that is bound for a

nation that has signed and ratified the Hague Convention. (Code 1981, § 45-17-19, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1997, p. 673, § 2.)

45-17-20. Penalty; prosecution of violations of article.

(a) Any person who violates subsection (d) of Code Section 45-17-8 shall be guilty of a misdemeanor.

(b) Each clerk of superior court is authorized to recommend to the appropriate prosecuting officers that criminal proceedings be instituted for violations of this article. (Code 1981, § 45-17-20, enacted by Ga. L. 1984, p. 1105, § 1; Ga. L. 1985, p. 149, § 45.)

ARTICLE 2

OFFICERS OF ARMED FORCES AS EX OFFICIO NOTARIES

OPINIONS OF THE ATTORNEY GENERAL

The purpose in enacting O.C.G.A. Art. 2, Ch. 17, T. 45 was to facilitate the presence of a notary for those military personnel on active duty during wartime; all others still had access to nonmilitary notaries. 1969 Op. Att'y Gen. No. 69-516.

45-17-30. Commissioned officers of armed services constituted as ex officio notaries; authority generally; effect of acts generally; no seal required.

All commissioned officers of all branches of the armed services of the United States of America are constituted ex officio notaries public of this state and as such are authorized, within and outside this state and within and outside the United States of America, to administer oaths, take acknowledgments, and attest instruments conveying or affecting property in Georgia. Acts performed by such officers as authorized in this Code section shall have the same effect as if performed within this state by notaries public of this state. A statement of his rank following the signature of any such officer shall be evidence of the fact of his rank and no seal shall be necessary. (Ga. L. 1943, p. 421, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Retired commissioned officers do not qualify under the provisions of O.C.G.A. Art. 2, Ch. 17, T. 45 as ex officio notaries public. 1969 Op. Att'y Gen. No. 69-516.

45-17-31. Persons authorized to have notarial acts performed by commissioned officers.

Any person who (1) is a member of the armed forces of the United States, (2) is serving as a merchant seaman outside the limits of the United States,

or (3) is outside the limits of the United States by permission, assignment, or direction of any department or official of the United States government in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged and the spouse, dependent child, or other dependent of such person may have instruments acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed by any commissioned officer in active service of the armed forces of the United States. (Ga. L. 1945, p. 360, § 1; Ga. L. 1984, p. 504, § 1.)

RESEARCH REFERENCES

ALR. — Proof of identity upon which officer certifying to an acknowledgment is justified in acting, 10 ALR 871. Sufficiency of certificate of acknowledgment, 29 ALR 919; 25 ALR2d 1124.

45-17-32. Validity and effect of notarial acts.

The notarial acts authorized by Code Section 45-17-31 are declared legal, valid, and binding; and instruments, documents, oaths, affirmations, depositions, and affidavits acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances and with the same force and effect as if they had been made or taken within this state before a duly qualified officer or official. (Ga. L. 1945, p. 360, § 1.)

45-17-33. Sufficiency of certification generally; effect of failure to state place of execution or acknowledgment.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or document, which certificate shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment. (Ga. L. 1945, p. 360, § 1.)

45-17-34. Signature, rank, and branch of officer as proof of authority; action by officer as prima-facie evidence.

If the signature, rank, and branch of service, or subdivision thereof, of any commissioned officer provided for in Code Section 45-17-30 appears upon any instrument, document, or certificate, no further proof of the authority of such officer so to act shall be required; and such action by such commissioned officer shall be prima-facie evidence that the person making such oath or acknowledgment is within the purview of Code Sections 45-17-30 through 45-17-33 and this Code section. (Ga. L. 1945, p. 360, § 1; Ga. L. 1990, p. 8, § 45.)

CHAPTER 18

EMPLOYEES' INSURANCE AND BENEFITS PLANS

Article 1		Sec.	
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Sec.			
45-18-1.	Definitions.		
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45-18-3.	Design of plan.	45-18-7.7.	Employees and dependents of critical access hospitals in health plans.
45-18-4.	Expenses not to be covered by plan.	45-18-8.	Right of employees to secure coverage for spouse and dependents; adoption of regulations governing discontinuance and resumption of dependent coverage.
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45-18-5.2.	Sheltered employment center employees.	45-18-10.	Right of continuation of coverage for former employees; payment of premiums; establishment of terms and conditions by board; appointment as United States attorney.
45-18-6.	Authorization of contracts to provide insurance benefits; invitation of proposals from insurers; reinsurance agreements; issuance of certificates of coverage; redetermination of contracts; discontinuance of contracts or establishment of self-insurance plans; contracts for administrative services; contracts with health maintenance organizations.	45-18-11.	Procedure for presentation of claims and payment of benefits.
45-18-7.	Retiring employees, spouses, and dependents; eligibility of employees of state-wide probation system to continue coverage upon retirement from local retirement system.	45-18-12.	Creation of health insurance fund; amounts credited to fund; special reserve; administrator and custodian of fund.
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45-18-7.2.	Agrirama Development Authority employees.	45-18-14.	Deductions from compensation and benefit payments of share of cost of coverage under plan of employees; payment of contributions to health insurance fund by departments, boards, and agencies of state; coverage of employee appealing discharge.
45-18-7.3.	Employees of Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia, spouses, and dependent children.	45-18-15.	Rules and regulations for admin-
45-18-7.4.	Employees of Hazardous Waste Management Authority [Repealed].		
45-18-7.5.	Employees of Georgia Housing		

PUBLIC OFFICERS AND EMPLOYEES

Sec.

istration of article; board to recommend to General Assembly schedule of maximum fees for hospitals and practitioners.

45-18-16. Certification to departments and other entities of the state of employer payment percentage for ensuing fiscal year; provision in budgets for funds for employer payments.

45-18-17. All employees to become members of plan unless coverage rejected or waived; withdrawal from plan by persons covered by Social Security medical care.

45-18-18. Discharge of certain debts or obligations due health insurance fund.

45-18-19. Confidentiality of claim forms and records.

Article 2

Deferred Compensation Plans

45-18-30. "Employee" defined.

45-18-31. Deferred compensation plans authorized for state, municipalities, counties, or other political subdivisions.

45-18-32. Administration of plans; participation by employees of county boards of health, school systems, Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund; provision in plans for income tax deferral benefits.

45-18-33. Payments from deferred compensation funds for purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from deferral; custodian of assets of the fund.

45-18-34. Plans not to reduce pensions or other benefits.

45-18-35. Plans to operate without cost to state, counties, cities, or other political subdivisions.

Sec.

45-18-36. Institution of salary deductions; records of individual account information.

Article 3

Employee Benefit Plan Council

45-18-50. Definitions.

45-18-51. Creation of council; membership, terms of office, and vacancies; compensation and expense reimbursement; officers; executive secretary and staff support; meetings; adoption of procedures; promulgation of rules and regulations.

45-18-52. Establishment of flexible employee benefit plans.

45-18-53. Authorization for payroll deductions.

45-18-54. Continuation of optional plans; approval of optional plans or contracting with new or additional insurers.

45-18-55. Commissioner of personnel administration as executive officer and custodian.

45-18-56. Execution of contracts by commissioner; bidding procedure.

45-18-57. Contributions from state departments, boards, and agencies.

45-18-58. Liability for errors or omissions.

Article 4

Capitol Hill Day-care Center

45-18-70. Establishment and operation.

45-18-71. Rules and regulations for personnel administration.

45-18-72. Start-up costs.

Article 5

Exemption of Certain Employees from Liability for Services at State Hospitals

45-18-80. Certain employees retired prior to July 1, 1962, exempt from personal liability for services at state hospitals; cooperation in application and claims process.

45-18-81. Legislative intent.

ARTICLE 1

STATE EMPLOYEES' HEALTH INSURANCE PLAN

Cross references. — Employees' Retirement System of Georgia, Ch. 2, T. 47.

45-18-1. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Community Health established under Chapter 5A of Title 31.

(1.1) "Commissioner" means the commissioner of community health.

(2) "Employee" means:

(A) A person who works full time for the state and receives his compensation in a direct payment from a department, agency, or institution of state government; provided, however, that such term shall not include specially classified maintenance and food service employees of the Jekyll Island—State Park Authority hired on or after July 1, 1987, and paid on an hourly basis;

(B) An annuitant who at the time of his or her retirement worked full time for the state and received his or her compensation in a direct payment from a department, agency, or institution of state government and who draws a monthly benefit from the Employees' Retirement System of Georgia or the Georgia Judicial Retirement System;

(C) A person who is appointed to an emeritus position under the laws of this state;

(D) Members of the General Assembly;

(E) Administrative and clerical personnel of the General Assembly;

(F) District attorneys of the superior courts of this state;

(G) Assistant district attorneys of the superior courts of this state who are appointed pursuant to Code Section 15-18-14 and district attorneys' investigators appointed pursuant to Code Section 15-18-14.1;

(H) A person who works full time and receives his compensation in a direct payment from a county board of health or the county boards of health comprising a health district or the county boards of health receiving financial assistance from the Department of Human Resources;

(I) An annuitant who at the time of his retirement worked full time and received his compensation in a direct payment from a county board of health or the county boards of health comprising a health

district or the county boards of health receiving financial assistance from the Department of Human Resources;

(J) A county employee who works full time for a county department of family and children services and who receives his compensation from a county department of family and children services;

(K) An annuitant who at the time of his retirement was a county employee who worked full time for a county department of family and children services and who received his compensation in a direct payment from a county department of family and children services and who draws a monthly benefit from either the Employees' Retirement System of Georgia or a county employees' retirement system;

(L) Secretaries employed by district attorneys and by judges of the superior courts and law clerks employed by judges of the superior courts under Code Sections 15-6-25 through 15-6-28 and Code Sections 15-18-17 through 15-18-19.

(3) "Person who works full time" means an individual who works at least 30 hours per week and whose employment is intended to be a continuing employment. This would exclude any student, seasonal, intermittent, or part-time employment. This would also exclude employment intended for only a very limited duration. Notwithstanding this definition or any other provision of this article, the board may, by regulation, make available to employees who work 17 1/2 hours or more per week such benefits as are required to be made available to such employees by regulations of the United States Internal Revenue Service or any other federal authority.

(4) "Professional claim administrators" means any person, firm, or corporation which has at least two years' experience in the handling of insurance claims and which the board has determined to be fully qualified, financially sound, and capable of meeting all of the service requirements of the contract of administration under such criteria as may have been established by appropriate rules and regulations promulgated by the board after due notice and hearing as required by law. (Ga. L. 1961, p. 147, §§ 1, 2, 6; Ga. L. 1962, p. 51, § 1; Ga. L. 1963, p. 277, § 1; Ga. L. 1975, p. 65, § 1; Ga. L. 1975, p. 1506, § 6; Ga. L. 1976, p. 1384, § 1; Ga. L. 1977, p. 884, § 1; Ga. L. 1979, p. 667, § 1; Ga. L. 1980, p. 455, § 3; Ga. L. 1980, p. 966, § 1; Ga. L. 1981, p. 425, § 1; Ga. L. 1987, p. 1035, § 1; Ga. L. 1987, p. 1337, § 2; Ga. L. 1989, p. 1148, § 1; Ga. L. 1999, p. 296, § 15; Ga. L. 2000, p. 1201, § 1.)

The 2000 amendment, effective July 1, 2000, in subparagraph (2)(B), inserted "or her" twice and added "or the Georgia Judicial Retirement System" at the end.

Law reviews. — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Part-time employees are not full-time employees eligible for coverage under O.C.G.A. Art. 1, Ch. 18, T. 45. 1963-65 Op. Att'y Gen. p. 219.

Part-time CETA employees are not eligible for the State Employee Health Insurance Plan. 1979 Op. Att'y Gen. No. 79-16.

"Trainees" receiving a scholarship and stipend from the State Health Department who do not work full-time for the state are not eligible for coverage under O.C.G.A. Art. 1, Ch. 18, T. 45. 1971 Op. Att'y Gen. No. 71-63.

Certain court reporters ineligible. — The court reporters for the superior courts are not full-time state employees receiving their compensation in a direct payment from state

funds, and therefore such court reporters are not eligible for inclusion under the State Employees Health Insurance Plan. 1972 Op. Att'y Gen. No. 72-92.

Assistant district attorney on leave without pay for maternity purposes. — A district attorney may place a state paid assistant district attorney on a voluntary leave without pay status for maternity purposes and that during that period of time the state paid assistant district attorney would be entitled to the same benefits and coverage under the State Health Benefit Plan as any other state employee on a voluntary leave of absence without pay for maternity purposes. 1983 Op. Att'y Gen. No. U83-44.

45-18-2. Authority to establish health insurance plan; rules and regulations; provisions of plan generally; coverage for retiring or retired employees.

(a) The board is authorized to establish a health insurance plan for employees of the state and to adopt and promulgate rules and regulations for its administration, subject to the limitations contained in this article. The health insurance plan may provide for group hospitalization and surgical and medical insurance against the financial costs of hospitalization, surgery, and medical treatment and care and may also include, among other things, prescribed drugs, medicines, prosthetic appliances, hospital inpatient and outpatient service benefits, dental benefits, vision care benefits, and medical expense indemnity benefits, including major medical benefits.

(b) If a retiring or retired employee or the beneficiary of such retiring or retired employee exercises eligibility under board regulations to continue coverage under the plan and the retiring or retired employees or the beneficiary is eligible to participate in the insurance program operated by or on behalf of the federal government under the provisions of 42 U.S.C.A. 1395, as amended, the coverage available under the health insurance plan shall be subordinated to the coverage available under such federal program. The board is authorized to promulgate regulations to establish the premium paid by the retired employee or beneficiary to reflect the subordination of coverage. (Ga. L. 1961, p. 147, § 3; Ga. L. 1980, p. 966, § 1; Ga. L. 1989, p. 1148, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

The Insurance Commissioner has the authority to require that a coordination of benefits endorsement to the employee group policy covering employees of the State of Georgia be filed with and approved by the Insurance Commissioner prior to its issuance to the master policy holder, the State Employee Health Insurance Plan. 1968 Op. Att'y Gen. No. 68-512.

Amount of employer contribution. — The statutory authority of the State Personnel Board and the Governor to set the employer contribution is no longer constrained by a percentage cap in general law. However, the authority is constrained by the health plan

statute itself to require the board to set the contribution for the year within amounts made available by the appropriations act. 1989 Op. Att'y Gen. No. 89-3.

When the board sets the employer contribution, it must take into account the budget, which in June has been finalized by enactment of the new appropriations act. When the rate is set, employers in state government must pay it, but they know before the fiscal year commences that the rate will be, and it must be, consistent with the overall budget as set by the appropriations act. 1989 Op. Att'y Gen. No. 89-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq., § 153 et seq., § 230 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 8, 9, 87-114.

45-18-3. Design of plan.

The health insurance plan shall be designed by the board to:

(1) Provide a reasonable relationship between the hospital, surgical, and medical benefits to be included and the expected distribution of expenses of each such type to be incurred by the covered employees and dependents; and

(2) Include reasonable controls, which may include deductible and reinsurance provisions applicable to some or all of the benefits, to reduce unnecessary utilization of the various hospital, surgical, and medical services to be provided and to provide reasonable assurance of stability in future years of the plan. (Ga. L. 1961, p. 147, § 5.)

45-18-4. Expenses not to be covered by plan.

The health insurance plan shall not include expenses incurred by or on account of an individual prior to the effective date of the plan; expenses for services received for injury or sickness due to war or any act of war, whether declared or undeclared, which war or act of war shall have occurred after the effective date of this plan; expenses for which the individual is not required to make payment; expenses to the extent of benefits provided under any employer group plan other than this plan in which the state participates in the cost thereof; and such other expenses as may be excluded by regulations of the board. (Ga. L. 1961, p. 147, § 4; Ga. L. 1966, p. 279, § 1; Ga. L. 1980, p. 966, § 2.)

RESEARCH REFERENCES

ALR. — National Service Life Insurance Act, 153 ALR 1413; 155 ALR 1445; 156 ALR 1445; 157 ALR 1445; 158 ALR 1445.

45-18-5. County officers and employees.

(a) The board is authorized to contract with the various counties of this state for the inclusion of the employees of any county within any health insurance plan or plans established under this article. The various counties of this state are authorized to contract with the board as provided in this Code section. In the event that any such contract is entered into, it shall be the duty of any counties so contracting to deduct from the salary or other compensation of its employees such payment as may be required under any health insurance plan and to remit the same to the board for inclusion in the health insurance fund. In addition, it shall be the duty of such county or counties to make the employer contributions required for the operation of such plan or plans.

(b) County officials may elect to be included in a health insurance plan, health maintenance organization, or other health benefits plan offered or provided by a county for its county officials or any health plan or plans established under this article. The governing authority of a county may elect by majority vote to provide for payment in a uniform manner of any portion, all, or none of the employer contributions for or required premiums or payments due from the county officials or former county officials who under this Code section are eligible for inclusion in the health plan or plans established under this article. The board is authorized to contract with the County Officers Association of Georgia on behalf of the various counties of this state for the inclusion in any health insurance plan or plans established under this article of officials, spouses, and dependents of officials serving in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority and officials, spouses, and dependents of officials leaving office on or after December 31, 1996, who have served at least 12 years in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority. The County Officers Association of Georgia is authorized to contract with the board as provided in this Code section. In the event that such a contract is entered into, it shall be the duty of the County Officers Association of Georgia to collect from the various counties of this state with which it has contracted under this subsection and remit to

the board such payment as may be required under any health insurance plan for inclusion in the health insurance fund. The County Officers Association of Georgia may add a reasonable fee to the premiums required under the plan to cover necessary administrative costs. In addition, it shall be the duty of the County Officers Association of Georgia to maintain and remit to the board accurate records of official, dependent, and other information required by the board to administer this Code section.

(c) The various counties of this state are authorized to contract with the County Officers Association of Georgia for the inclusion in any health insurance plan or plans established under this article of officials, spouses, and dependents of officials serving in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority and officials, spouses, and dependents of officials leaving office on or after December 31, 1996, who have served at least 12 years in one or more of the following capacities: probate judge, sheriff, tax commissioner or tax collector, clerk of the superior court, full-time or part-time state court judge, solicitor, state court clerk, or solicitor-general, chief magistrate, juvenile court judge, or members of the county governing authority. The County Officers Association of Georgia is authorized to contract with the various counties of the state as provided in this Code section. In the event that any such contracts are entered into, it shall be the duty of any counties so contracting to deduct from the salary or other compensation of its officials and otherwise collect from former officials such payment as may be required under any health insurance plan and to remit the same to the County Officers Association of Georgia for payment to the board. To the extent employer contributions are not fully made by a county, it shall be the duty of the covered officials and former officials to make such employer contributions required on their behalf for the operation of such plan or plans.

(c.1) Any local board of education may elect for members thereof and their spouses and dependents to be included in any health plan or plans established under Code Section 20-2-918. It shall be the duty of any local boards of education so electing to deduct from the salary or other compensation of its members such payment as may be required under paragraph (1) of subsection (b) of Code Section 20-2-55 and to remit the same to the health insurance fund created under Code Section 20-2-918.

(d) In administering this Code section, it shall be the responsibility of the board to develop rates for coverage based on the actual claims experience of the individuals covered by this Code section. The board shall require a bond to assure the contractual performance of any entities with which it contracts under this Code section.

(e) Nothing in this Code section shall preclude the exercise of any options or rights otherwise available to such county officers or members of

local boards of education under other state or federal laws which relate to extension or continuation of health benefits. (Ga. L. 1972, p. 726, § 1; Ga. L. 1997, p. 857, § 1; Ga. L. 1998, p. 128, § 45; Ga. L. 1999, p. 81, § 45; Ga. L. 1999, p. 813, § 2; Ga. L. 2001, p. 1071, § 2; Ga. L. 2002, p. 841, § 2.)

The 2001 amendment, effective July 1, 2001, substituted the present provisions of subsection (c.1) for the former which read: “(c.1)(1) Any local board of education may elect for members thereof and their spouses and dependents to be included in any health plan or plans established under this article. The board is authorized to contract with the Georgia School Boards Association, Inc., on behalf of the various local boards of education of this state for the inclusion in any health insurance plan or plans established under this article persons serving as members of local boards of education and their spouses and dependents. The Georgia School Boards Association, Inc., is authorized to contract with the board as provided in this Code section. In the event that such a contract is entered into, it shall be the duty of the Georgia School Boards Association, Inc., to collect from the various local boards of education of this state with which it has contracted under this subsection such payment as may be required under any health insurance plan for inclusion in the health insurance fund and to remit the same to the board. In addition, it shall be the duty of the Georgia School Boards Association, Inc., to maintain and remit to the board accurate records of member, spouse, dependent, and other information required by the board to administer this Code section.

“(2) The various local boards of education of this state are authorized to contract with the Georgia School Boards Association, Inc., for the inclusion in any health insur-

ance plan or plans established under this article persons serving as members of local boards of education and their spouses and dependents. The Georgia School Boards Association, Inc., is authorized to contract with the various local boards of education of the state as provided in this Code section. In the event that any such contracts are entered into, it shall be the duty of any local boards of education so contracting to deduct from the salary or other compensation of its members such payment as may be required under paragraph (1) of subsection (b) of Code Section 20-2-55 and to remit the same to the Georgia School Boards Association, Inc., for payment to the board.”

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, punctuation was revised in subsections (b) and (c) and “Code” was capitalized in the last sentence of subsection (d).

Editor’s notes. — Ga. L. 1999, p. 813, § 3, not codified by the General Assembly, provides that: “Nothing herein shall be construed to allow county officials or local school board officials to be included in the state employee’s health insurance plan except that the appropriate agencies of state government may provide administrative services, only, for county officials and local school officials participating in various plans.”

Ga. L. 2002, p. 841, § 2, effective June 1, 2002, reenacted this Code section without change.

45-18-5.1. Licensed blind or otherwise seriously disabled vendors.

The Department of Labor is authorized to contract with the Georgia Cooperative Services for the Blind, Inc., a nominee agent designated by the Division of Rehabilitation Services of the Department of Labor, for the inclusion of licensed blind persons or other persons with disabilities operating a vending facility in accordance with Article 2 of Chapter 15 of Title 34 within any health insurance plan or plans established under this article. In the event any contract is entered into, it shall be the duty of the Georgia Cooperative Services for the Blind, Inc., to deduct the payment required under the plan from the earnings or other compensation of

licensed blind persons or other persons with disabilities and remit it to the Department of Labor for inclusion in the health insurance fund. In addition, it shall be the duty of the Georgia Cooperative Services for the Blind, Inc., to make the employer contributions required for the operation of such plan or plans. (Ga. L. 1981, p. 120, § 1; Ga. L. 1982, p. 833, § 2; Ga. L. 2000, p. 1137, § 7.)

The 2000 amendment, effective July 1, 2001, substituted "Department of Labor" for "board" in two places; inserted "persons" in two places; substituted "other persons with disabilities" for "otherwise seriously disabled vendors" in two places; and, in the first sentence, substituted "Labor" for

"Human Resources" and substituted "Chapter 15 of Title 34" for "Chapter 9 of Title 49".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "Article 2" was substituted for "Article 3" in the first sentence.

45-18-5.2. Sheltered employment center employees.

The board is authorized to contract with public and private nonprofit sheltered employment centers which contract with or employ persons within the Division of Rehabilitation Services of the Department of Labor and the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources for the inclusion of employees working in the sheltered employment centers within any health insurance plan or plans established under this article. The board is authorized to adopt regulations for entering into any contract. In the event any contract is entered into, it shall be the duty of the sheltered employment center to remit any funds that may be deducted from the earnings or other compensation of such sheltered employees for inclusion in the health insurance fund. In addition, it shall be the duty of the sheltered employment center to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-5.2, enacted by Ga. L. 1984, p. 720, § 1; Ga. L. 1988, p. 13, § 45; Ga. L. 2000, p. 1137, § 2; Ga. L. 2002, p. 1324, § 1-21.)

The 2000 amendment, effective July 1, 2001, substituted "Division of Rehabilitation Services of the Department of Labor" for "Division of Rehabilitation Services" in the first sentence.

The 2002 amendment, effective July 1, 2002, substituted "Developmental Disabilities, and Addictive Diseases" for "Mental

Retardation, and Substance Abuse" in the first sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "Mental Health, Mental Retardation and Substance Abuse" was substituted for "Mental Health and Mental Retardation" in the first sentence.

45-18-6. Authorization of contracts to provide insurance benefits; invitation of proposals from insurers; reinsurance agreements; issuance of certificates of coverage; redetermination of contracts; discontinuance of contracts or establishment of self-insurance plans; contracts for administrative services; contracts with health maintenance organizations.

(a) The board is authorized to execute a contract or contracts to provide the benefits under the plan of health insurance benefits determined upon in accordance with this article. Such contract or contracts may be executed with one or more corporations licensed to transact accident and health insurance business in this state. All of the benefits to be provided under this article may be included in one or more similar contracts or the benefits may be classified into different types, with each type included under one or more similar contracts issued by the same or different companies. A reasonable time before entering into any insurance contract provided for in this Code section, the board shall invite proposals from such qualified insurers as in the opinion of the board would desire to accept any part of the insurance coverage authorized by this article.

(b) The board may arrange with any corporation licensed to transact accident and health insurance business in this state, which corporation issued any such contract, to reinsure portions of such contract with any other such corporation which elected to be a reinsurer and is legally competent to enter into a reinsurance agreement. The board may designate one or more of such corporations as the administering corporation or corporations. Each employee who is covered under any such contract or contracts shall receive a certificate setting forth the benefits to which the employee and his dependents are entitled thereunder, stating to whom such benefits shall be payable, stating to whom claims should be submitted, and summarizing the provisions of the contract principally affecting the employee and his dependents. Such certificate shall be in lieu of the certificate which the corporation or corporations issuing such contract or contracts would otherwise issue. The corporations eligible to participate as reinsurers, and the amount of coverage under the contract or contracts to be allocated to each issuing corporation or reinsurer, may be redetermined by the board for and in advance of any contract year after the first year and with any modifications thereof it deems appropriate to carry out the intent of reinsuring portions of the coverage, subject to such limitations as set forth in this article. At the end of any contract year the board may discontinue any contract or contracts it has executed with any corporation or corporations and replace it or them with a contract or contracts with any other corporation or corporations meeting the requirements of this Code section; or the board may, at its discretion, establish a self-insured plan in whole or in part.

(c) Notwithstanding any other provision of this article to the contrary, the board is authorized to execute a contract or contracts with one or more

insurers authorized to transact accident and sickness insurance in this state or with one or more hospital service nonprofit corporations, nonprofit medical service corporations, or health care corporations or with one or more professional claim administrators authorized or licensed to transact business in this state or with one or more independent adjusting firms with employees who are licensed as independent adjusters pursuant to Article 1 of Chapter 23 of Title 33 to provide administrative services in connection with a self-insured health insurance plan for state employees.

(d) The board may contract with any health maintenance organization qualified to conduct business in this state pursuant to Chapter 21 of Title 33, relating to health maintenance organizations, which organization provides evidence that it is qualified to operate as a health maintenance organization in accordance with the rules and regulations issued by the secretary of the Department of Health and Human Services of the United States; or the board may contract with any other corporation licensed under Title 33, which corporation is authorized by law to provide the same types of benefits which are provided by such health maintenance organizations. (Ga. L. 1961, p. 147, § 6; Ga. L. 1976, p. 1384, § 1; Ga. L. 1977, p. 884, § 1; Ga. L. 1980, p. 966, § 1; Ga. L. 1993, p. 91, § 45.)

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Contract for administrative services. — The State Personnel Board is authorized to enter into a contract with an organization to have them act as administrator for the board should the board decide to change from an insured to a self-insured health insurance program. 1972 Op. Att'y Gen. No. 72-44.

The State Health Benefit Plan is not subject to the State Insurance Code, and neither the State Personnel Board nor the entity administering self-insured plans for the State Personnel Board would be subject to any

administrative fines or sanctions under the State Insurance Code for administration of such plans. 1982 Op. Att'y Gen. No. 82-70.

Procurement of health insurance contracts. — The State Personnel Board, and not the Department of Administrative Services, has the exclusive authority to contract with health maintenance organizations for health insurance benefits for state employees and public school teachers under the State Health Benefit Plan. 1987 Op. Att'y Gen. No. 87-32.

45-18-7. Retiring employees, spouses, and dependents; eligibility of employees of state-wide probation system to continue coverage upon retirement from local retirement system.

(a) The contract or contracts shall provide for health insurance for retiring state employees and their spouses and dependent children, as defined by the regulations of the board, on such terms as the board may deem appropriate; and the board may authorize the inclusion in the plan of the employees and retiring employees of state authorities covered by the Employees' Retirement System of Georgia and their spouses and dependent children, as defined by the regulations of the board. Any state authority participating in the plan shall be required to pay the same rate of contribution paid by the state. The board shall adopt regulations prescribing

ing the conditions under which an employee or retiring employee may elect to participate in or withdraw from the plan.

(b) Employees of the state-wide probation system administered by the Department of Corrections who were employees of a county probation system of a county having a population of 800,000 or more according to the United States decennial census of 2000 or any future such census and who were members of a local retirement system and had ten or more years of creditable service under the local retirement system at the time the county probation system became a part of the state-wide probation system shall be eligible to continue coverage under the health insurance plan for the state employees upon retirement from a local retirement system by paying a premium set by the board. Such retired persons shall be eligible to enroll their spouses and eligible dependents in accordance with the regulations of the board. Such retirees shall be treated in the same manner as other retirees eligible to continue coverage under the Employees' Retirement System of Georgia. The board may promulgate and adopt rules and regulations governing continuance and discontinuance of coverage for such retired persons and their spouses and eligible dependents. (Ga. L. 1961, p. 147, § 7; Ga. L. 1987, p. 1005, § 1; Ga. L. 2002, p. 1473, § 1.)

The 2002 amendment, effective July 1, 2002, near the middle of the first sentence of subsection (b), substituted "800,000" for

"550,000" and substituted "census of 2000" for "census of 1980".

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Ineligible employees of state authority. — Stone Mountain Memorial Association is an authority of the state, and association employees, being employees of a state authority not covered by the Employees Retirement System of Georgia, do not meet the eligibility requirements set forth in O.C.G.A. § 45-18-7. 1975 Op. Att'y Gen. No. 75-6.1.

Withdrawal from plan. — The State Personnel Board can adopt a regulation providing for a method by which state employees can withdraw from the State Health Insurance Plan after their initial employment. 1969 Op. Att'y Gen. No. 69-502.

45-18-7.1. Employees of the Georgia Development Authority.

The board is authorized to contract with the Georgia Development Authority for the inclusion in any health insurance plan or plans established under this article of the employees and retiring employees of the Georgia Development Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Development Authority to deduct from the salary or other remuneration of its employees such payment as may be required under the board's regulations. In addition, it shall be the duty of the Georgia Development Authority to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.1, enacted by Ga. L. 1984, p. 543, § 1.)

45-18-7.2. Agrirama Development Authority employees.

The board is authorized to contract with the Georgia Agrirama Development Authority for the inclusion in any health insurance plan or plans established under this article of the employees and retiring employees of the Georgia Agrirama Development Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Agrirama Development Authority to deduct from the salary or other remuneration of its employees such payment as may be required under the board's regulations. In addition, it shall be the duty of the Georgia Agrirama Development Authority to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.2, enacted by Ga. L. 1987, p. 662, § 1.)

45-18-7.3. Employees of Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia, spouses, and dependent children.

The board is authorized to contract with the Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and the Sheriffs' Retirement Fund of Georgia for the inclusion in any health insurance plan or plans established under this article of the employees and retiring employees of said Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of said Peace Officers' Annuity Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia to deduct from the salary or other remuneration of their employees such payment as may be required under the board's regulations. In addition, it shall be the duty of said Peace Officers' Annuity and Benefit Fund, Georgia Firefighters' Pension Fund, and Sheriffs' Retirement Fund of Georgia to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.3, enacted by Ga. L. 1988, p. 766, § 1; Ga. L. 1997, p. 857, § 2; Ga. L. 1997, p. 1375, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "of Georgia" was deleted following "Benefit Fund" near the beginning of the first sentence.

45-18-7.4. Employees of Hazardous Waste Management Authority.

Reserved. Repealed by Ga. L. 2002, p. 415, § 45, effective April 18, 2002.

Editor's notes. — This Code section was based on Ga. L. 1989, p. 490, § 1.

45-18-7.5. Employees of Georgia Housing and Finance Authority, spouses, and dependent children.

The board is authorized to contract with the Georgia Housing and Finance Authority for the inclusion in any health insurance plan or plans established under this article of the employees and retiring employees of the Georgia Housing and Finance Authority and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia Housing and Finance Authority to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees, retired employees, or dependents as may be required under the board's regulations. In addition, it shall be the duty of the Georgia Housing and Finance Authority to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.5, enacted by Ga. L. 1995, p. 573, § 1.)

45-18-7.6. Employees of Georgia-Federal State Inspection Service, spouses, and dependent children.

The board is authorized to contract with the Georgia-Federal State Inspection Service for the inclusion in any health insurance plan or plans established under this article of the state employees of, retiring employees of, and employees who retired under the Employees' Retirement System of Georgia on or before July 1, 2000, from the Georgia-Federal State Inspection Service and their spouses and dependent children, as defined by the regulations of the board. It shall be the duty of the Georgia-Federal State Inspection Service to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees or dependents as may be required under the board's regulations. In addition, it shall be the duty of the Georgia-Federal State Inspection Service to make the employer contributions required for the operation of such plan or plans. (Code 1981, § 45-18-7.6, enacted by Ga. L. 2000, p. 1411, § 1; Ga. L. 2001, p. 1032, § 1.)

Effective date. — This Code section became effective July 1, 2000.

The 2001 amendment, effective April 27, 2001, in the first sentence, substituted "of," for "and" and inserted ", and employees who retired under the Employees' Retirement System of Georgia on or before July 1,

2000, from" and deleted ", retired employees," following "qualified employees" in the second sentence.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 270 (2001).

45-18-7.7. Employees and dependents of critical access hospitals in health plans.

The board is authorized to contract with any public or nonprofit critical access hospital that meets such requirements as the department may establish for the inclusion of the employees and dependents of such critical access hospitals in any health plan established under this article. It shall be

the duty of such critical access hospital to deduct from the salary or other remuneration or otherwise collect such payment from its qualified employees as may be required under the board's regulations. In addition, it shall be the duty of such critical access hospital to make the employer contributions required for the operation of such plan. (Code 1981, § 45-18-7.7, enacted by Ga. L. 2001, p. 1240, § 6-1.)

Effective date. — This Code section became effective April 28, 2001.

45-18-8. Right of employees to secure coverage for spouse and dependents; adoption of regulations governing discontinuance and resumption of dependent coverage.

Upon agreeing to pay his contribution to the cost of such coverage, each employee shall be entitled to have his spouse and dependent children, as defined by the regulations of the board, included in the coverage. The board shall adopt regulations governing the discontinuance and resumption by employees of coverage for dependents. (Ga. L. 1961, p. 147, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 43 Am. Jur. 2d, Insurance, §§ 486, 506, 515. **C.J.S.** — 30 C.J.S., Employer-Employee, § 155.

45-18-9. Right of continuation of coverage for spouse or dependents of deceased employees; right to resumption of coverage; payment of contributions; promulgation of rules and regulations as to continuance, discontinuance, and resumption of coverage.

(a) At the time of death of any employee, annuitant, or other person who is the primary or principal beneficiary of said contract or contracts for health insurance and who dies on or after March 1, 1966, having at least 13 years and four months of creditable service as determined pursuant to Chapter 2 of Title 47, any spouse or dependent child or children included in the coverage of the contract or contracts for health insurance as provided in this article may be entitled to continue such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board shall be authorized to promulgate and adopt rules and regulations governing the continuance, discontinuance, and resumption of coverage by any such spouse or dependent child or children.

(b) At the time of death of any employee, annuitant, or other person who was the primary or principal beneficiary of said contract or contracts for health insurance and who died during the period from July 1, 1962, to and including April 30, 1966, any spouse or dependent child or children included in the coverage of the contract or contracts for health insurance

as provided in this article may be entitled to resume such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board may promulgate and adopt rules and regulations governing the resumption, continuance, and discontinuance of coverage by any such spouse or dependent child or children.

(c) At the time of death of any employee, annuitant, or other person who is the primary or principal beneficiary of said contract or contracts for health insurance pursuant to Chapter 8 of Title 47, or as determined pursuant to Chapter 9, 12, or 13 of Title 47, any annuitant included in the coverage of the contract or contracts for health insurance as provided in this article may be entitled to continue such coverage upon agreeing to pay contributions to the cost of such coverage as may be provided by rules and regulations of the board. The board shall be authorized to promulgate and adopt rules and regulations governing the continuance, discontinuance, and resumption of coverage by any such spouse or dependent child or children.

(d) The surviving spouse and covered dependents of any retired employee who are included in the contract or contracts for health insurance coverage under this article shall be eligible to continue such coverage after the death of the retired employee upon agreeing to pay employee premiums for such coverage in accordance with the rules and regulations of the board. The board is authorized and directed to promulgate and adopt rules and regulations governing the continuance, discontinuance, or resumption of coverage by any such surviving spouse and covered dependents. This subsection shall not apply unless the parties have been married at least one full year prior to the death of the retired employee; and coverage shall cease for the covered spouse upon the occurrence of any event, other than the death of the retired employee, which would render the surviving spouse ineligible for continued coverage under the contract. For purposes of the immediately preceding sentence relating to covered spouses, the remarriage of the surviving spouse shall be considered to be the same as a divorce from the retired employee for purposes of determining the spouse's eligibility.

(e) If any employee of this state is killed while acting within the scope of his or her employment or receives bodily injury while acting within the scope of his or her employment that directly results in death thereafter, eligible dependents may continue coverage, provided that:

(1) The deceased employee was the primary or principal beneficiary of any contract or contracts for health insurance established under this article;

(2) At the time of death, the employee included his or her eligible dependents under such contract or contracts for health insurance;

(3) At the time of death, the employee maintained continuous coverage during the period between injury and death;

(4) The eligible dependents agree to pay the contributions to the cost of such coverage; and

(5) The eligible dependents pay such contributions in accordance with the rules and regulations promulgated and adopted by the board governing the continuance, discontinuance, and resumption of coverage by such eligible dependents. (Ga. L. 1966, p. 279, § 2; Ga. L. 1978, p. 1927, § 1; Ga. L. 1980, p. 9, § 1; Ga. L. 1980, p. 94, § 1; Ga. L. 1981, p. 983, §§ 1, 3; Ga. L. 2000, p. 1411, § 2.)

The 2000 amendment, effective July 1, 2000, added subsection (e).

45-18-10. Right of continuation of coverage for former employees; payment of premiums; establishment of terms and conditions by board; appointment as United States attorney.

(a) Any other provision of this article to the contrary notwithstanding, on and after July 1, 1978, any employee who resigns from employment or who fails to be reelected or who does not seek reelection to office and who at the time he or she leaves office or employment has completed eight or more years of service as an employee, as defined in Code Section 45-18-1, shall be entitled to continue full coverage and participation, including coverage for his or her spouse and dependent children, in the health insurance plan upon the payment of a monthly premium to be fixed by the board; and, in addition thereto, any member of the General Assembly who ceases to hold office as such at any time after July 1, 1981, and who was eligible to retire at the time of leaving office, except for the attainment of retirement age, pursuant to a public retirement system created by law to which the General Assembly appropriates funds, and who does not withdraw employee contributions from such public retirement system, shall be entitled to continue full coverage and participation, including coverage for the spouse and dependent children of such person, in the health insurance plan by continuing to pay to the board the monthly premium which is paid by an active state employee. The first monthly premium provided for in this Code section must be paid within 30 days following receipt of a notice of premium to be sent to such person by the board. If such premium is not paid within such time limit, such insurance coverage shall be canceled and such person shall not again be eligible to participate in such plan. This Code section shall not affect the rights otherwise available under this article to retired employees and their spouses and dependents. The board is authorized to establish terms and conditions for participation which the board shall deem appropriate and which are not in conflict with this Code section.

(b) Subject to such rules as the office may establish, any district attorney or assistant district attorney who ceases to hold office as such in order to accept appointment as a United States attorney or assistant United States attorney, who was eligible to retire at the time of leaving office, except for the attainment of retirement age, pursuant to a public retirement system created by law to which the General Assembly appropriates funds, and did not withdraw employee contributions from such public retirement system, who declines coverage under this plan in order to be covered under a health benefit plan available to federal employees, and who ceases to hold such position with the federal government without having vested in any retirement system for federal employees may be permitted to reestablish full coverage and participation, including coverage for the spouse and dependent children of such person, in the health insurance plan by notifying the board within 90 days of ceasing to be employed by the federal government or by August 1, 1998, whichever is later, that he or she desires to resume coverage in the health insurance plan and by paying to the board the monthly premium which is paid by an active state employee. (Ga. L. 1978, p. 1927, § 2; Ga. L. 1981, p. 983, § 2; Ga. L. 1998, p. 823, § 1; Ga. L. 2001, p. 1094, § 3.)

The 2001 amendment, effective July 1, 2001, in subsection (a), in the first sentence, inserted “or she”, inserted “or her”, and substituted “a monthly” for “an annual”, substituted “first monthly” for “annual” in the second sentence, and substituted “such” for “the annual” in the third sentence.

45-18-11. Procedure for presentation of claims and payment of benefits.

(a) Any benefits payable under the plan may be made either directly to the attending physicians, hospitals, medical groups, or others furnishing the services upon which a claim is based or to the covered employee, upon presentation of valid bills for such services, subject to such provisions to facilitate payment as may be made by the board.

(b) The claims must be presented in writing to the board or its designee within two years from the date the service was rendered or else no benefits will be owed or paid.

(c) All drafts or checks issued by the board or the board’s designee shall be void if not presented and accepted by the drawer’s bank within six months of the date the draft or check was drawn. If the payee or member does not present the draft or check for acceptance during the seven years following the date the draft or check was issued, the draft or check will be void, funds will be retained in the insurance fund, and further payments for such claim will not be owed or paid. (Ga. L. 1961, p. 147, § 9; Ga. L. 1979, p. 667, § 2; Ga. L. 1988, p. 397, § 1.)

Law reviews. — For article surveying recent legislative and judicial developments regarding Georgia’s insurance laws, see 31 Mercer L. Rev. 117 (1979).

RESEARCH REFERENCES

ALR. — Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

45-18-12. Creation of health insurance fund; amounts credited to fund; special reserve; administrator and custodian of fund.

There is created a health insurance fund which shall be available without fiscal year limitations for premium, subscription charge, benefits, and administration costs. The amounts withheld from employees and retired employees under this article, all amounts contributed by the state or from federal funds to such health insurance fund, and all amounts contributed by any state authority pursuant to this article shall be credited to such health insurance fund. All other income, as well as the income derived from any dividends, premium rate adjustments, or other refunds under any contract or contracts, shall be credited to and constitute a part of such fund. Any amounts remaining in such fund after all premiums or subscription charges and other expenses have been paid shall be retained in such fund as a special reserve for adverse fluctuation. The commissioner of community health shall be executive officer of the Board of Community Health for the administration of this article and custodian of such health insurance fund and shall be responsible under a properly approved bond for all moneys coming into said fund and paid out of said fund as may be required to be paid to any contracting corporation under any contract entered into pursuant to this article and to cover administrative costs. (Ga. L. 1961, p. 147, § 10; Ga. L. 1962, p. 51, § 2; Ga. L. 1999, p. 296, § 23.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 8.

45-18-13. Deposit of amounts from health insurance fund available for investment in trust account; investment of funds; withdrawal of funds from trust account.

Any amounts held by the health insurance fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit said funds in a trust account for credit only to the health insurance fund. The director of the Office of Treasury and Fiscal Services shall invest these health insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50. All income derived from said investments shall

accrue to the health insurance fund. When moneys are paid over to the Office of Treasury and Fiscal Services as provided in this Code section, the commissioner of community health shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner of community health wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal in writing to the director of the Office of Treasury and Fiscal Services. (Ga. L. 1974, p. 14, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1999, p. 296, § 23; Ga. L. 1999, p. 592, § 19; Ga. L. 2000, p. 1474, § 7.)

The 2000 amendment, effective May 1, 2000, substituted “the limitations of Code Section 50-5A-7 and Chapter 17 of Title 50” for “all the terms, conditions, limitations, and restrictions imposed by Articles 1 and 3

of Chapter 11 of Title 33 upon domestic insurance companies in the making and disposing of their investments” at the end of the third sentence.

45-18-14. Deductions from compensation and benefit payments of share of cost of coverage under plan of employees; payment of contributions to health insurance fund by departments, boards, and agencies of state; coverage of employee appealing discharge.

During any period in which an employee is covered under this article prior to the date of his retirement, there shall be withheld from each salary payment or other compensation of such employee, as his share of the cost of coverage under this plan, such portion of the premium or subscription charges under the terms of any contract or contracts issued in accordance with this article as may be established by the board. During any month in which benefits are being paid by the Employees' Retirement System of Georgia to an individual so covered under this program, contributions in the amounts prescribed by the board shall be deducted from such payments with the consent of the recipient. The various departments, boards, and agencies of the state government shall contribute to the health insurance fund such portions of the cost of such benefits as may be established by the board and the Governor as funds become available in each department, board, and agency, based on a percentage of the total outlay for personal services in addition to an amount to be established by the board to defray the cost of administration and the state's portion of the cost of benefits payable for annuitants. The legislative fiscal officer shall contribute to the health insurance fund as an employer payment for and on behalf of all members of the General Assembly and its administrative and clerical personnel. The Department of Administrative Services shall contribute to the fund as an employer payment for and on behalf of district attorneys, assistant district attorneys appointed pursuant to Code Section 15-18-14, and secretaries and law clerks of the superior courts of the state and secretaries employed by district attorneys. The amount of such contributions shall be such portions of the costs of such benefits as may be established by the board as a percent of the total outlay of services rendered

by members of the General Assembly, its administrative and clerical personnel, and the district attorneys of the superior courts of the state; and, in addition thereto, an amount to be established by the board shall be contributed to defray the costs of administration.

If an employee has been eligible for coverage under the state health insurance plan for a period of ten years and is discharged from employment and the discharge is under appeal to the State Personnel Board, such employee shall be entitled to continue coverage by paying the employee contribution under the health insurance plan until the State Personnel Board has rendered a decision or for a period of six months, whichever is less. (Ga. L. 1961, p. 147, § 11; Ga. L. 1962, p. 51, § 3; Ga. L. 1963, p. 277, § 2; Ga. L. 1970, p. 9, § 1; Ga. L. 1973, p. 332, § 1; Ga. L. 1976, p. 199, § 1; Ga. L. 1979, p. 667, § 3; Ga. L. 1981, p. 425, § 2; Ga. L. 1988, p. 413, § 1.)

Law reviews. — For article surveying recent legislative and judicial developments regarding Georgia's insurance laws, see 31 Mercer L. Rev. 117 (1979).

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Maximum not mandatory charge. — The State Personnel Board and the Governor, in their discretion, can assess any state department any amount for its employer contribution not to exceed 4 (now 5) percent of that department's "total outlay for personal services." That provision simply sets a maximum limit on the employer's contribution which may be charged. It does not mandate a 4 (now 5) percent across-the-board employer's contribution for all employees whether covered by health insurance or not. 1979 Op. Att'y Gen. No. 79-16.

Amount of employer contribution. — The statutory authority of the State Personnel Board and the Governor to set the employer contribution is no longer constrained by a

percentage cap in general law. However, the authority is constrained by the health plan statute itself to require the board to set the contribution for the year within amounts made available by the appropriations act. 1989 Op. Att'y Gen. No. 89-3.

When the board sets the employer contribution, it must take into account the budget, which in June has been finalized by enactment of the new appropriations act. When the rate is set, employers in state government must pay it, but they know before the fiscal year commences that the rate will be, and it must be, consistent with the overall budget as set by the appropriations act. 1989 Op. Att'y Gen. No. 89-3.

45-18-15. Rules and regulations for administration of article; board to recommend to General Assembly schedule of maximum fees for hospitals and practitioners.

(a) The board shall promulgate such rules and regulations as may be required for the effective administration of this article. Such rules and regulations shall include, but not be limited to, rules and regulations establishing the conditions under which employees who originally rejected coverage may acquire coverage at a later date. The commissioner of community health, as executive officer of the board, shall employ such personnel as may be needed to carry out this article and such employees shall be employees of the Department of Community Health. The pro rata

share of the costs of operating the Department of Community Health in the manner prescribed by law shall be a part of the administrative costs of the employees' health insurance plan.

(b) The board shall investigate fees of hospitals, pharmacists, and practitioners of the healing arts and present recommendations to the General Assembly by not later than January 15, 1991, for a schedule of maximum fees for hospitals and practitioners of the healing arts. The recommended fees for hospitals shall be determined based upon a statistical analysis of the peer groups adjusted for the intensity of the case mix for hospitals of same licensure classification or subclassification (e.g., general, pediatric, psychiatric, rehabilitation, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(c) The recommended fees for practitioners of the healing arts and pharmacists shall be determined based upon a statistical analysis of the peer groups for such practitioners and pharmacists of the same licensure classification (e.g., internists, family practitioners, cardiologists, neurosurgeons, etc.) and of similar services in the same geographic area. The recommended fee schedule shall not be at the average of the usual and customary charges if the board determines that the average represents an unreasonably high or low charge.

(d) The recommendations shall include an analysis of all hospitals, pharmacists, and practitioners accepting assignment of benefits for such services not to exceed the amount authorized by the fee schedule. The board shall publish a list of practitioners that accept assignment of benefits under the plan.

(e) The recommendations shall include an analysis of the impact of practitioners agreeing to provide medical or surgical services at a reduced rate for members of the health insurance plan and of pharmacists and hospitals agreeing to provide hospital services, medical equipment, or pharmaceuticals at a reduced rate for members of the health insurance plan. The board shall publish a list of practitioners of the healing arts, pharmacists, and hospitals that offer a reduced rate for members and the rate at which those services, equipment, or pharmaceuticals have been offered. (Ga. L. 1961, p. 147, § 12; Ga. L. 1962, p. 51, § 4; Ga. L. 1964, p. 196, § 1; Ga. L. 1990, p. 1924, § 3; Ga. L. 1999, p. 296, § 23.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following “e.g.” in the second sentence of subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 153 et seq., § 230 et seq. **C.J.S.** — 73 C.J.S., Public Administrative Law and Procedure, §§ 87-114.

45-18-16. Certification to departments and other entities of the state of employer payment percentage for ensuing fiscal year; provision in budgets for funds for employer payments.

On or before June 1 of each year, the commissioner of community health shall certify to the director or chief administrative officer of each state department, bureau, institution, board, commission, or authority having employees covered by this article the amount of percentage adopted by the board as employer payments for the ensuing fiscal year; and they shall, in their annual budget, make provisions for funds with which to pay the board the required employer payments. (Ga. L. 1961, p. 147, § 14; Ga. L. 1999, p. 296, § 23.)

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Amount of employer contribution. — The statutory authority of the State Personnel Board and the Governor to set the employer contribution is no longer constrained by a percentage cap in general law. However, the authority is constrained by the health plan statute itself to require the board to set the contribution for the year within amounts made available by the appropriations act. 1989 Op. Att’y Gen. No. 89-3.

When the board sets the employer contribution, it must take into account the budget, which in June has been finalized by enactment of the new appropriations act. When the rate is set, employers in state government must pay it, but they know before the fiscal year commences that the rate will be, and it must be, consistent with the overall budget as set by the appropriations act. 1989 Op. Att’y Gen. No. 89-3.

45-18-17. All employees to become members of plan unless coverage rejected or waived; withdrawal from plan by persons covered by Social Security medical care.

(a) All persons who become state employees as defined in this article and who are eligible as specified in the rules and regulations of the board shall become members of this health insurance program unless the employee rejects or waives such coverage in writing.

(b) Any annuitant or person appointed to an emeritus position or any person eligible to be covered by the medical care for the aged program of the Social Security Administration, which person is included in the coverage of any health insurance plan established as provided in this article, may withdraw from such plan and discontinue his coverage thereunder in such manner as may be provided by rules and regulations promulgated and adopted by the board. In the event any such annuitant or person appointed to an emeritus position withdraws from such plan and discontinues his coverage thereunder, coverage of his spouse and dependent child or children shall likewise be withdrawn and coverage thereunder discontinued. (Ga. L. 1961, p. 147, § 15; Ga. L. 1964, p. 196, § 2; Ga. L. 1966, p. 279, § 3; Ga. L. 1979, p. 667, § 4; Ga. L. 1989, p. 1148, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Withdrawal from plan. — The State Personnel Board can adopt a regulation providing for a method by which state employees can withdraw from the State Health Insurance Plan after their initial employment. 1969 Op. Att'y Gen. No. 69-502.

Employees of regional development centers are not eligible to participate in the state

employees health insurance plan since regional development centers are instrumentalities of the municipalities and counties of their regions and since employees of such instrumentalities do not fall within the statutory definition of "employees" who are eligible for membership in the state health benefit plan. 1992 Op. Att'y Gen. No. 92-22.

45-18-18. Discharge of certain debts or obligations due health insurance fund.

(a) It is the purpose of this Code section to authorize a procedure whereby the commissioner of community health may administratively discharge a debt or obligation due the health insurance fund for employees of the state when the amount is \$400.00 or less and:

(1) It is manifest that the debt or obligation is uncollectable; or

(2) The costs of collecting the debt or obligation would be equal to or greater than the amount due the fund.

(b) In order to conserve the health insurance funds, the commissioner of community health is authorized, in conjunction with the state auditor, to develop a procedure for the administrative discharge of any debt or obligation due the insurance fund when such debt or obligation is \$400.00 or less. This provision shall not be construed to deny to the commissioner the authority to pursue the collection of any debt, obligation, or claim in any amount whatsoever when such pursuit is in the best interest of the insurance fund.

(c) Upon a formal determination that a debt or obligation to the insurance fund of \$400.00 or less is uncollectable, or that the costs of collection would equal or exceed the amount due the fund, the commissioner of community health shall execute and transmit to the state auditor a certification which includes the following: a recapitulation of the efforts made to collect the debt or obligation; an estimate of the costs to pursue collection of the debt or obligation administratively or judicially; such other information as may be required by the procedure developed by the commissioner and the state auditor; and a statement that further collection effort would be detrimental to the financial interests of the fund. The certification shall be made under oath or affirmation and shall be sent to the state auditor at such times as shall be prescribed in the procedure developed by the commissioner and the state auditor. Upon receipt of the certification, the state auditor shall be authorized to approve the removal of such uncollectable amounts from the financial records of the fund. (Code 1981, § 45-18-18, enacted by Ga. L. 1988, p. 397, § 2; Ga. L. 1999, p. 296, § 23.)

45-18-19. Confidentiality of claim forms and records.

Claim forms and other records which would disclose the nature of the health services provided to an insured shall be maintained on a confidential basis by the health insurance plan. No person shall disclose such records or information to any other person except as necessary for the proper administration of the health insurance plan. (Code 1981, § 45-18-19, enacted by Ga. L. 1989, p. 1148, § 4.)

ARTICLE 2**DEFERRED COMPENSATION PLANS****OPINIONS OF THE ATTORNEY GENERAL**

Distinction between state deferred compensation plans and optional life insurance programs under O.C.G.A. § 45-7-51. — State Deferred Compensation Law pertains to deferred compensation plan which is aimed primarily at deferring compensation and taxable event of receiving compensation until a later time. O.C.G.A. § 45-7-51 creates an optional life insurance program. This optional program is to be administered by each separate agency, whereas a deferred compensation plan is to be administered by the State Personnel Board. Accordingly, there is no conflict between the two programs and both may exist simultaneously. 1980 Op. Att’y Gen. No. 80-6.

The State Personnel Board cannot contract to defer compensation for state tax purposes. 1980 Op. Att’y Gen. No. 80-6.

State employee providing services for state for compensation is eligible to participate in deferred compensation plan. 1980 Op. Att’y Gen. No. 80-6.

The State Personnel Board has no discretion in this matter. It cannot exclude eligible employees from participating in plan, and it may not allow ineligible employees to participate. 1980 Op. Att’y Gen. No. 80-6.

Deferred funds must be included when calculating withholding taxes for year. — Even if funds deferred are not included in taxable income for state income tax purposes for year earned, they would be included for purposes of calculating withholding taxes during that year. 1980 Op. Att’y Gen. No. 80-6.

45-18-30. “Employee” defined.

As used in this article, the term “employee” means any person, whether appointed or elected, who provides services for the state, including any state authority authorized to participate in the Employees’ Retirement System of Georgia under Chapter 2 of Title 47, or for a county, municipality, or other political subdivision and who is paid for providing such services. (Ga. L. 1974, p. 198, § 1; Ga. L. 1988, p. 1417, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 2.

45-18-31. Deferred compensation plans authorized for state, municipalities, counties, or other political subdivisions.

The state or any county, municipality, or other political subdivision may contract with any employee to defer, in whole or in part, any portion of such employee's compensation under a deferred compensation plan; and the state, county, municipality, or other political subdivision may provide the deferred compensation plan itself or it may contract with any company qualified to do business in this state to provide such benefits. (Ga. L. 1974, p. 198, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Intent of section. — O.C.G.A. § 45-18-31 is intended to afford every state employee the opportunity to participate in state deferred compensation plan once it is implemented. 1980 Op. Att'y Gen. No. 80-6.

State Personnel Board, as administrator of the plan, is entity with whom employee actually contracts. 1980 Op. Att'y Gen. No. 80-6.

Methods of funding. — The Georgia Deferred Compensation Plan can be funded by any of several methods so long as the plan operates without cost to the state except for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. 1975 Op. Att'y Gen. No. 75-107.

Board of Regents. — Establishment of tax deferred plan under § 401(k) of Internal

Revenue Code (26 U.S.C. § 401(k)) by Board of Regents of University System of Georgia or institutions within system would not conflict with O.C.G.A. § 45-18-31, which governs the State Compensation Plan since the State Deferred Compensation Plan is in addition to any other retirement, pension, or other benefit provided by law. 1985 Op. Att'y Gen. No. 85-9.

Establishment of a deferred compensation plan allowed by § 457 of the Internal Revenue Code (26 U.S.C. § 457) by the Board of Regents of the University System of Georgia would not conflict with O.C.G.A. § 45-18-31, since the State Deferred Compensation Plan is in addition to any other retirement, pension, or other benefit provided by law. 1985 Op. Att'y Gen. No. 85-20.

45-18-32. Administration of plans; participation by employees of county boards of health, school systems, Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund; provision in plans for income tax deferral benefits.

The State Personnel Board shall administer any deferred compensation plan provided for the employees of the state. Employees of the county boards of health receiving financial assistance from the Department of Human Resources may, with the approval of the State Personnel Board and the approval of such organizations, participate in the state plan. Employees of county and independent school systems may, with the approval of the State Personnel Board and the approval of such systems, participate in the state plan. Employees of the Lake Allatoona Preservation Authority, the Georgia Federal-State Shipping Point Inspection Service, and the Georgia Firefighters' Pension Fund may, with the approval of the State Personnel Board and the approval of such organizations, participate in the state plan. The State Personnel Board shall investigate and approve a deferred

compensation plan which gives the employees of the state income tax benefits in connection with plans authorized by the United States Internal Revenue Code, so that compensation deferred under such plan shall not be included for purposes of computation of any federal income tax withheld on behalf of any such employee or payable by such employee before any deferred payment date. All contributions to the deferred compensation plan shall also be exempt from state withholding tax as long as such contributions are not includable in gross income for federal income tax purposes. The governing body of a city, county, or other political subdivision may appoint an administrator for all deferred compensation plans, whose duties shall include the administration of the plan and the investigation and approval of the plan or plans. All such plans shall provide tax deferral benefits for the respective employees in a manner similar to that of the plan for state employees. (Ga. L. 1974, p. 198, § 4; Ga. L. 1981, p. 662, § 1; Ga. L. 2001, p. 1097, § 1; Ga. L. 2002, p. 814, § 1.)

The 2001 amendment, effective July 1, 2002, added the fourth sentence in this Code section.

The 2002 amendment, effective July 1,

45-18-33. Payments from deferred compensation funds for purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from deferral; custodian of assets of the fund.

Notwithstanding any other provision of law to the contrary, in order to carry out the provisions of the deferred compensation plan, the state or any county, municipality, or other political subdivision is authorized to make payments for the purchase of insurance, endowments, annuities, mutual funds, or savings from funds derived from the deferral of compensation. Such payments shall not be construed to be a prohibited use of the general assets of the state, county, municipality, or other political subdivision. The State Personnel Board or the administrator of the plan shall have the power to arrange for a custodian for the holding of such insurance policies, funds, investments, and other assets of the fund. (Ga. L. 1974, p. 198, § 5; Ga. L. 1981, p. 119, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 45-18-33 does not expand investment authority of political subdivisions of the state. 1980 Op. Att'y Gen. No. U80-55.

Methods of funding. — The Georgia Deferred Compensation Plan can be funded by any of several methods so long as the plan operates without cost to the state except for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. 1975 Op. Att'y Gen. No. 75-107.

State Personnel Board obligated to take steps to defray administrative costs. — State Personnel Board is under an obligation to invest deferred compensation for interest income to defray administration costs or to take such other steps as may be necessary to defray administrative costs. 1980 Op. Att'y Gen. No. 80-6.

45-18-34. Plans not to reduce pensions or other benefits.

The deferred compensation programs authorized by this article shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, municipality, or other political subdivision; and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law. (Ga. L. 1974, p. 198, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

State deferred compensation plan is in addition to any other retirement, pension, or other benefit provided by law. Accordingly, if there is authority for any other tax sheltered annuity plan or other benefits by law, it would not conflict with O.C.G.A. Art. 2, Ch. 18, T. 45 and both plans could continue. 1980 Op. Att’y Gen. No. 80-6.

45-18-35. Plans to operate without cost to state, counties, cities, or other political subdivisions.

The State Personnel Board or the administrator of the plan shall arrange for all services required to carry out the deferred compensation plan or plans so that such plan or plans shall operate without cost to the state, county, city, or other political subdivision except for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. (Ga. L. 1974, p. 198, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Limitation on funding method. — The Georgia Deferred Compensation Plan can be funded by any of several methods so long as the plan operates without cost to the state except for the incidental expense of administering the payroll salary deduction or reduction and the remittance thereof. 1975 Op. Att’y Gen. No. 75-107.

State Personnel Board obligated to take steps to defray administrative costs. — State Personnel Board is under obligation to invest deferred compensation for interest income to defray administration costs or to take such other steps as may be necessary to defray administrative costs. 1980 Op. Att’y Gen. No. 80-6.

Contracts necessary to operate plan are not limited in duration to state fiscal year. — Deferred compensation plan shall operate without cost to state. State’s credit is not pledged and no state debt can be created by operation of deferred compensation plan. Therefore, contracts necessary to operate deferred compensation plan are not limited in duration to state fiscal year. 1980 Op. Att’y Gen. No. 80-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 190, 191.

45-18-36. Institution of salary deductions; records of individual account information.

(a) The salary reduction or deductions referred to in this article shall be instituted at the request of the participating employees by the payroll departments applicable to the respective employees.

(b) Records of participation agreements, payroll deductions, investment options, and other individual account information shall be maintained as confidential by the administrator. The records shall not be disclosed except as necessary to accomplish the purposes of this article or in cases where a subpoena has been issued for the purpose of discovery or as otherwise authorized in writing by the employee. This prohibition shall not bar federal, state, or local tax authorities from such access to the records as may be necessary to establish the tax status or liability of a participating employee. (Ga. L. 1974, p. 198, § 8; Ga. L. 1989, p. 313, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Extent of legal involvement of employing agency in plan. — Employing agencies must make salary deductions and reductions necessary under plan when requested to do so by participating employee. Other than mak-

ing deductions and reductions and transmitting funds to State Personnel Board, the employing agency has no other legal involvement. 1980 Op. Att'y Gen. No. 80-6.

ARTICLE 3**EMPLOYEE BENEFIT PLAN COUNCIL****45-18-50. Definitions.**

As used in this article, the term:

(1) "Board" means the State Personnel Board.

(2) "Council" means the Employee Benefit Plan Council established in Code Section 45-18-51.

(3) "Employee" means a member of the General Assembly or a person who works full time for the state and receives his compensation in a direct payment from a department, agency, authority, or institution of state government; a county department of family and children services or a county department of health; the Federal-State Shipping Point Inspection Service; the Georgia Firefighters' Pension Fund; a member of any local board of education; and public schoolteachers and public school employees as defined in Code Sections 20-2-880 and 20-2-910, exclusive of the members, employees, and officials of the Board of Regents of the University System of Georgia.

(4) "Full time" means the employment of a person who works at least 30 hours per week and whose employment is intended to be continuing

employment. This would exclude any student, seasonal, intermittent, or part-time employment: provided, however, that public schoolteachers and public school employees as defined in Code Sections 20-2-880 and 20-2-910 shall be deemed to be employed full time for the purposes of this article. This would also exclude employment intended for only a very limited duration or in a sheltered employment program for the purpose of training or transitioning a person into the continued employment environment. (Code 1981, § 45-18-50, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1990, p. 1247, § 1; Ga. L. 2001, p. 1071, § 3; Ga. L. 2002, p. 1425, § 1.)

The 2001 amendment, effective July 1, 2001, inserted "a member of any local board of education;" in paragraph (3).

The 2002 amendment, effective July 1, 2002, inserted "the Federal-State Shipping Point Inspection Service; the Georgia

Firefighters' Pension Fund;" in the middle of paragraph (3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "schoolteachers" was substituted for "school teachers" in paragraphs (3) and (4).

45-18-51. Creation of council; membership, terms of office, and vacancies; compensation and expense reimbursement; officers; executive secretary and staff support; meetings; adoption of procedures; promulgation of rules and regulations.

(a)(1) There is created an Employee Benefit Plan Council consisting of the following ten members appointed by the Governor:

(A) The five members of the State Personnel Board who shall serve for terms of office which correspond with their terms of office on the State Personnel Board;

(B) Two department heads who have employees eligible to participate in the employee benefit plans, which department heads shall serve for terms of office of four years; provided, however, that the initial term of one of such appointees shall be two years; and provided, further, that the office of such a member shall become vacant if he ceases to be a department head;

(C) Two state employees who are eligible to participate in the employee benefit plans, which state employees shall serve for terms of office of four years; provided, however, that the initial term of one of such appointees shall be two years; and provided, further, that the office of such a member shall become vacant if he ceases to be a state employee; and

(D) One member from a corporation domiciled in the State of Georgia that insures or administers employee benefit plans, which member shall serve for a term of office of four years.

(2) Successors to the members of the council provided in paragraph (1) of this subsection shall have the same qualifications and shall be

appointed by the Governor for terms of office of four years and until their successors are appointed and qualified. A vacancy on the council shall be filled by the Governor appointing a successor who possesses the same qualifications as his predecessor and who shall serve for the unexpired term.

(b) The members of the council who are in state employment shall serve without compensation but, subject to fund availability, shall be reimbursed by the state department in which employed for all necessary expenses that may be incurred in the performance of their duties under this article in accordance with state travel regulations promulgated by the Office of Planning and Budget and the Department of Audits and Accounts in the same manner that employees of the state merit system are reimbursed. For those councilmembers who are not in state employment, the expense and mileage allowance shall be the same as that authorized for the General Assembly and shall be payable, subject to fund availability, from the state merit system.

(c) The Governor shall appoint one member to act as chairman for a term specified by the Governor until a successor is duly appointed. The council shall elect one of its members as vice-chairman to act in the absence of the chairman. If the office of chairman is vacated for any reason, the Governor shall appoint a successor.

(d) Meetings of the council shall be scheduled at the discretion of the council chairman and, where feasible, concomitant with the meetings of the State Personnel Board as provided in Chapter 20 of this title. All meetings of the council shall be open to the public.

(e) The council shall adopt procedures for the conduct of its activities.

(f) The commissioner of personnel administration shall serve as executive secretary to the council and provide the council with staff support and other assistance in carrying out its duties.

(g) In the promulgation of rules and regulations, the council shall be governed by Chapter 20 of this title. (Code 1981, § 45-18-51, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 2002, p. 415, § 45.)

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted “councilmembers” for “council members” in the second sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Expenses of State Personnel Board members. — Members of the State Personnel Board are authorized to receive their mileage expense and one daily allowance equal to the daily allowance received by members of the General Assembly for each day in which they perform duties or attend meetings for the State Personnel Board, including attendance at meetings for the Employee Benefit Plan Council, but they are not entitled to any additional compensation whatsoever. 1990 Op. Att’y Gen. No. 90-21.

45-18-52. Establishment of flexible employee benefit plans.

(a) The council is authorized to establish a flexible employee benefit plan for employees of the state and public schoolteachers and public school employees and to promulgate rules and regulations for its administration, subject to the limitations contained in this article and in Articles 1 and 2 of this chapter. The flexible employee benefit plan may provide for deductions or salary reductions for group life insurance, group property and casualty insurance, disability insurance, supplemental health and accident insurance, health care or dependent care spending accounts as authorized under Section 125 of the United States Internal Revenue Code of 1986, other types of employee welfare benefits, or for salary reductions for health premiums under Article 1 of this chapter and Code Sections 20-2-880 and 20-2-910. The council may establish rating categories for disability insurance based on eligibility for coverage by the disability program of the Social Security Administration. At the council's discretion, any of the insurance or other type of employee welfare benefits authorized by this Code section may be operated as a self-insured plan in whole or in part or by contract with any company authorized to transact such business in this state. Except as provided in Code Section 45-18-30, Code Sections 20-2-880 and 20-2-910, and as implemented prior to January 1, 1986, the council is authorized to establish the plan or plans in connection with plans authorized by the United States Internal Revenue Code for the purpose of income tax advantage.

(b) The council is authorized to promulgate rules and regulations to require local school boards that elect coverage under the plan as provided in subsection (b) of Code Section 45-18-54 to enroll and maintain a minimum participation percentage when offering the plan to its employees. (Code 1981, § 45-18-52, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1990, p. 567, § 1; Ga. L. 1990, p. 1247, § 2; Ga. L. 1992, p. 2111, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "schoolteachers" was substituted for "school teachers" in the first sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 1992, "self-insured" was substituted for "self insured" in subsection (a).

Administrative rules and regulations. — Flexible benefits program, Official Compilation of Rules and Regulations of the State of Georgia, Rules of Employee Benefit Plan Council, Chapter 478.2.

45-18-53. Authorization for payroll deductions.

(a) In order to carry out the provisions of the flexible employee benefit plan, the head of each department, agency, authority, county department of health, the Federal-State Shipping Point Inspection Service, the Georgia Firefighters' Pension Fund, or local school system is authorized to deduct or

reduce from salary or wages voluntarily designated amounts by his employees for purchasing insurance or other welfare benefits.

(b) Records of benefit selections, payroll deductions, and other individual account information shall be maintained as confidential by the flexible benefit plan. The records shall not be disclosed except as necessary to accomplish the purposes of this article or as otherwise authorized in writing by the employee. This prohibition shall not bar federal, state, or local tax authorities from such access to the records as may be necessary to establish the tax status or liability of an employee or other individual. (Code 1981, § 45-18-53, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1990, p. 1247, § 3; Ga. L. 2002, p. 1425, § 2.)

The 2002 amendment, effective July 1, 2002, inserted “the Federal-State Shipping Point Inspection Service, the Georgia Firefighters’ Pension Fund,” in subsection (a).

45-18-54. Continuation of optional plans; approval of optional plans or contracting with new or additional insurers.

(a) The head of each department, agency, authority, or county department of health shall have the option to determine whether or not the employees within his respective agency shall continue any optional program that is in operation on January 1, 1986. New optional employee benefit plans or any contracting with new or additional insurers under existing plans that authorize the deduction or reduction of voluntarily designated amounts, including insurance, from the salaries of the full-time employees must be approved by the council after January 1, 1986, except that the Legislative Services Committee may continue or approve any optional program for members of the General Assembly and employees of the General Assembly.

(b) Each local board of education shall have the option to elect coverage in this program, and, in the event an employee rejects coverage, such employee shall be authorized to obtain coverage at a later date upon compliance with the rules and regulations promulgated by the council relative thereto. New optional employee benefit plans or any contracting with new or additional insurers under existing plans that authorize the deduction or reduction of voluntarily designated amounts, including insurance, from the salaries of the full-time employees must be approved by the council after January 1, 1991. Each local board of education electing to participate in the coverage under this plan shall be assessed a pro rata share of the cost of administering the plan.

(c) Each local board of education electing coverage shall have the option to determine whether or not the employees within the school system shall continue any optional program that is in operation on January 1, 1991. (Code 1981, § 45-18-54, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1986, p. 10, § 45; Ga. L. 1990, p. 1247, § 4.)

45-18-55. Commissioner of personnel administration as executive officer and custodian.

The commissioner of personnel administration shall be the executive officer for the administration of this article and the custodian of such fund or funds as may be required in the implementation of this article. The commissioner of personnel administration shall employ such personnel as may be necessary to carry out his duties and responsibilities under this article. (Code 1981, § 45-18-55, enacted by Ga. L. 1985, p. 441, § 1.)

45-18-56. Execution of contracts by commissioner; bidding procedure.

The commissioner is authorized to execute a contract or contracts to provide the benefits as approved in the plan or plans in accordance with this article. Such contract or contracts may be executed with one or more corporations licensed to transact business in this state, or the plan or plans, except for life, disability, or individual supplemental accident and sickness insurance, may be totally self-administered. Prior to entering into any contract under this Code section, the commissioner shall invite proposals from and allow a reasonable time for qualified corporations or qualified entities to bid on providing approved plan or plans benefits. The commissioner may invite proposals from any qualified entity as in the opinion of the council would desire to accept any part of the benefits authorized by this article. (Code 1981, § 45-18-56, enacted by Ga. L. 1985, p. 441, § 1; Ga. L. 1986, p. 10, § 45.)

45-18-57. Contributions from state departments, boards, and agencies.

The various departments, boards, and agencies of the state government may contribute such portions of the cost of such benefits and the administration thereof as may be established by the general appropriations Act. (Code 1981, § 45-18-57, enacted by Ga. L. 1985, p. 441, § 1.)

45-18-58. Liability for errors or omissions.

The various departments, boards, agencies, and their employees shall not incur any liability for errors or omissions made in the performance of the agreement between the departments, boards, and agencies and the employee. (Code 1981, § 45-18-58, enacted by Ga. L. 1985, p. 441, § 1.)

ARTICLE 4

CAPITOL HILL DAY-CARE CENTER

RESEARCH REFERENCES

ALR. — Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured, 68 ALR4th 266.

45-18-70. Establishment and operation.

Notwithstanding any other provisions of law, the commissioner of personnel administration in conjunction with the Georgia Building Authority is authorized by contract or otherwise to establish, equip, and operate a day-care center as a capitol hill pilot program for the purpose of serving children who are members of households of employees of state government in and around the state capitol. The commissioner of personnel administration in conjunction with the Georgia Building Authority is authorized to establish or provide for the establishment of appropriate fees and charges to be chargeable against the state employees who are beneficiaries of services provided by such facility to pay for the cost of their operation and to accept money, equipment, or other property donated for use in connection with the facility. (Code 1981, § 45-18-70, enacted by Ga. L. 1986, p. 1489, § 1.)

45-18-71. Rules and regulations for personnel administration.

The State Personnel Board shall promulgate such rules and regulations as may be required for the effective administration of this article. (Code 1981, § 45-18-71, enacted by Ga. L. 1986, p. 1489, § 1.)

45-18-72. Start-up costs.

The commissioner of personnel administration shall present recommendations no later than December 1, 1986, for funding any start-up costs of the pilot project. (Code 1981, § 45-18-72, enacted by Ga. L. 1986, p. 1489, § 1.)

ARTICLE 5

EXEMPTION OF CERTAIN EMPLOYEES FROM LIABILITY FOR
SERVICES AT STATE HOSPITALS**45-18-80. Certain employees retired prior to July 1, 1962, exempt from personal liability for services at state hospitals; cooperation in application and claims process.**

Any other provision of this chapter to the contrary notwithstanding, those state employees with at least 34 years of creditable service who retired

from state government prior to July 1, 1962, who are entitled to full medical and dental services from a state hospital, as established by the State Board of Health in its March 1, 1962, meeting, shall be exempt from any and all personal liabilities for services at state hospitals. Such services shall include full medical, dental, psychiatric, skilled and intermediate nursing care, and custodial care as available at state hospitals and shall be considered as part of retirement benefits to such retirees. Such retired employees shall be required to cooperate in the application and claims process for any and all benefits, plans, or programs available for payment of cost of care at state hospitals, but such employees shall be exempt from personal liability for any cost after application of such benefits, plans, or programs. (Code 1981, § 45-18-80, enacted by Ga. L. 1992, p. 2100, § 1; Ga. L. 1993, p. 91, § 45.)

45-18-81. Legislative intent.

It is the intent of this article to provide that any such state employees currently hospitalized at any state hospital shall be relieved of personal liability for any existing cost of care charges, provided employees or those responsible for employees cooperate and ensure that to the greatest extent possible applications are made for all benefits, plans, and programs available for payment of cost of care at state hospitals. (Code 1981, § 45-18-81, enacted by Ga. L. 1992, p. 2100, § 1.)

CHAPTER 19

LABOR PRACTICES

Article 1

Strikes by Public Employees

Sec.

- 45-19-1. Definitions; right to express complaints or opinions not impaired.
- 45-19-2. Public employees not to promote, participate in, or encourage strikes.
- 45-19-3. Supervising personnel not to authorize, approve, or consent to strikes.
- 45-19-4. Termination of employment, forfeiture of civil service status, job rights, seniority, and emoluments upon violation of Code Section 45-19-2; eligibility of employee for reappointment.
- 45-19-5. Action by person not a public employee to encourage strike.

Article 2

Fair Employment Practices

- 45-19-20. Short title.
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- 45-19-22. Definitions.
- 45-19-23. Creation of Board of Commissioners of the Commission on Equal Opportunity; members; terms; officers; meetings; compensation of members; powers and duties of board; annual report to Governor and General Assembly; special masters' list.
- 45-19-24. Commission on Equal Opportunity created; appointment of administrator; assignment of commission to Governor for administrative purposes.
- 45-19-25. Function of administrator.
- 45-19-26. Attorney General to be legal adviser to administrator.
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- 45-19-28. Limitation on provisions of article relating to age discrimination.
- 45-19-29. Unlawful practices generally.

Sec.

- 45-19-30. Unlawful practices in training or apprenticeship programs.
- 45-19-31. Unlawful practices in advertisement of employment.
- 45-19-32. Unlawful practice for party to violate conciliation agreement.
- 45-19-33. Different standards of compensation or different terms and conditions of employment where not based on race, color, religion, sex, national origin, disability, or age.
- 45-19-34. Hiring, employing, or selecting for training programs where religion or national origin a bona fide occupational qualification.
- 45-19-35. Use of quotas because of imbalances in employee ratios prohibited; grants of preferential treatment to certain individuals or groups not required by article; adoption of plans required by Governor to reduce imbalance; effect of article upon certain employment practices.
- 45-19-36. Filing complaints of unlawful practice; action by administrator.
- 45-19-37. Appointment of special master to conduct hearing on complaint; procedure.
- 45-19-38. Findings, conclusions, and order of special master generally; order to cease and desist from unlawful practice and to take remedial action.
- 45-19-39. Appeal to superior court of final order of special master or complaint dismissed by administrator.
- 45-19-40. Entry of court judgment based upon final order of administrator or special master; notification of parties; effect of judgment.
- 45-19-41. Administrator to have exclusive jurisdiction over claims under article; final determination of claim bars further state actions.
- 45-19-42. Procurement of violation of article by person not subject thereto not a defense.

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45-19-43. Access of administrator or designee to premises, records, and documents; persons required to make and keep employment records; application for relief from order due to hardship; unlawful for administrator or em-

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ployee of administrator to make information public.
 45-19-44. Unlawful practices punishable by civil fine.
 45-19-45. Unlawful conspiracies.
 45-19-46. Overtime compensation.

ARTICLE 1

STRIKES BY PUBLIC EMPLOYEES

RESEARCH REFERENCES

ALR. — Right of public employees to form or join a labor organization affiliated with a federation of trade unions or which includes private employees, 40 ALR3d 728.

Validity and construction of statutes or ordinances providing for arbitration of labor

disputes involving public employees, 68 ALR3d 885.

Bargainable or negotiable issues in state public employment labor relations, 84 ALR3d 242.

45-19-1. Definitions; right to express complaints or opinions not impaired.

As used in this article, the term:

(1) "Public employee" means any person holding a position by appointment or employment in the government of this state or any person holding a position which provides essential public services without which the public health, safety, welfare, or morals would be endangered, by appointment or employment in the government of a county, municipality, school system, or other political subdivision of this state or in any agency, authority, board, commission, or public institution of this state or political subdivision thereof.

(2) "Public employment" means the appointment or employment in the government of this state or the government of a county, municipality, school system, or other political subdivision of this state or in any agency, authority, board, commission, or public institution of this state or political subdivision thereof.

(3) "Strike" means the failure to report for duty, the willful absence from one's position, the stoppage or deliberate slowing down of work, or the withholding in whole or in part of the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; provided, however, that nothing in this article shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed to and does not interfere with the full, faithful, and

proper performance of the duties of employment. (Ga. L. 1962, p. 459, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1998, p. 1155, § 1.)

Law reviews. — For review of 1998 legislation relating to public officers and employees, see 15 Ga. St. U. L. Rev. 201 (1998).

JUDICIAL DECISIONS

Cited in Local 189 Int'l Union of Police Ass'ns v. Barrett, 524 F. Supp. 760 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Right to express complaints and opinions.

— A state employee has the right, either singularly or collectively, to express or communicate complaints or opinions relating to state employment, including freedom to enter into organizations created for like purposes; the only limitation upon such activities of the state employees would prevent their striking, or otherwise interfering with proper performance of the duties of state employment, or obstructing access to or egress from state property. 1969 Op. Att'y Gen. No. 69-379.

Right to join labor union. — Although the Fulton County Board of Family and Children Services lacks authority to enter into a col-

lective bargaining agreement with a union, there is no prohibition against the board's having discussions with employees or their representatives on appropriate subjects; while state employees are prohibited from striking, they have the right to express complaints or opinions relating to the conditions of their employment; this would appear to include the right to join a labor union. 1973 Op. Att'y Gen. No. 73-56.

Activities not amounting to strike. — The Department of Transportation has no power to take steps to prevent any labor activity short of strikes and other obstructions to the performance of the duties of employment. 1969 Op. Att'y Gen. No. 69-379.

RESEARCH REFERENCES

Am. Jur. 2d. — 48 Am. Jur. 2d, Labor and Labor Relations, §§ 1040, 3545.

C.J.S. — 83 C.J.S., Strike.

ALR. — Rights of state and municipal public employees in grievance proceedings, 46 ALR4th 912.

45-19-2. Public employees not to promote, participate in, or encourage strikes.

No public employee shall promote, encourage, or participate in any strike; provided, however, that no right to collective bargaining currently recognized by law is abridged by this article. (Ga. L. 1962, p. 459, § 1; Ga. L. 1998, p. 1155, § 1; Ga. L. 1999, p. 81, § 45.)

Law reviews. — For article discussing right of Georgia state employees to participate in strikes, see 4 Ga. L. Rev. 110 (1969).

JUDICIAL DECISIONS

Agreement fixing employment conditions prohibited. — The State Ports Authority in the operation of the docks and warehouses at its Savannah terminals was without authority to enter into an agreement with any third party fixing the terms and conditions of the employment of personnel working for the

authority. *International Longshoremen's Ass'n v. Georgia Ports Auth.*, 217 Ga. 712, 124 S.E.2d 733, cert. denied, 370 U.S. 922, 82 S. Ct. 1561, 8 L. Ed. 2d 503 (1962).
Cited in *Local 189 Int'l Union of Police Ass'ns v. Barrett*, 524 F. Supp. 760 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Right to express complaints or opinions. — A state employee has the right, either singularly or collectively, to express or communicate complaints or opinions relating to state employment, including freedom to enter into organizations created for like purposes; the only limitation upon such activities of the state employees would prevent their striking, or otherwise interfering with proper performance of the duties of state employment, or obstructing access to or egress from state property. 1969 Op. Att'y Gen. No. 69-379.

Employees may not lawfully strike to demand recognition from the Georgia Ports Authority if the purpose of such recognition is to force the authority to bargain with the union over the terms and conditions of employment imposed by the authority. 1965-66 Op. Att'y Gen. No. 66-136.
Activity not amounting to a strike. — The Department of Transportation has no power to take steps to prevent any labor activity short of strikes and other obstructions to the performance of the duties of employment. 1969 Op. Att'y Gen. No. 69-379.

RESEARCH REFERENCES

ALR. — Validity of public utility anti-strike laws and regulations, 22 ALR2d 894.
 Union organization and activities of public employees, 31 ALR2d 1142; 37 ALR3d 1147; 95 ALR3d 1102.
 Damage liability of state or local public employees' union officials for unlawful work stoppage, 84 ALR3d 336.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees, 22 ALR4th 1103.

45-19-3. Supervising personnel not to authorize, approve, or consent to strikes.

No person exercising any authority, supervision, or direction over any public employee shall have the power to authorize, approve, or consent to a strike by one or more public employees; and such person shall not authorize, approve, or consent to such a strike. (Ga. L. 1962, p. 459, § 5; Ga. L. 1998, p. 1155, § 1.)

Cross references. — Prohibition against work stoppages, slowdowns, or strikes by municipal firefighters, § 25-5-12.

Law reviews. — For article discussing right of Georgia state employees to participate in strikes, see 4 Ga. L. Rev. 110 (1969).

JUDICIAL DECISIONS

Cited in Local 189 Int'l Union of Police Ass'ns v. Barrett, 524 F. Supp. 760 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Right to express complaints or opinions.

— A state employee has the right, either singularly or collectively, to express or communicate complaints or opinions relating to state employment, including freedom to enter into organizations created for like purposes; the only limitation upon such activities of the state employees would prevent their striking, or otherwise interfering with proper performance of the duties of state

employment, or obstructing access to or egress from state property. 1969 Op. Att'y Gen. No. 69-379.

The Department of Transportation has no power to take steps to prevent any labor activity short of strikes and other obstructions to the performance of the duties of employment. 1969 Op. Att'y Gen. No. 69-379.

RESEARCH REFERENCES

ALR. — Labor law: right of public employees to strike or engage in work stoppage, 37 ALR3d 1147.

Union security arrangements in state public employment, 95 ALR3d 1102.

45-19-4. Termination of employment, forfeiture of civil service status, job rights, seniority, and emoluments upon violation of Code Section 45-19-2; eligibility of employee for reappointment.

Any public employee who violates Code Section 45-19-2 shall be deemed to have terminated his or her employment; shall forfeit his or her civil service status, job rights, seniority, and emoluments, if any; and subsequent to such violation shall not be eligible for appointment or reappointment or employment or reemployment in public employment for a period of three years after such violation except upon the following conditions:

(1) His or her direct or indirect compensation shall in no event exceed that received by him or her immediately prior to the time of such violation;

(2) His or her direct or indirect compensation shall not be increased for three years after such subsequent appointment or reappointment or employment or reemployment; and

(3) He or she shall be on probation for a period of five years following such appointment or reappointment or employment or reemployment, during which period he or she shall serve without tenure and at the pleasure of the appointing or employing officer or body. (Ga. L. 1962, p. 459, § 3; Ga. L. 1998, p. 1155, § 1.)

Law reviews. — For article discussing right of Georgia state employees to participate in strikes, see 4 Ga. L. Rev. 110 (1969).

JUDICIAL DECISIONS

Cited in Local 189 Int'l Union of Police Ass'ns v. Barrett, 524 F. Supp. 760 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

The Department of Transportation has no power to take steps to prevent any labor activity short of strikes and other obstruc-

tions to the performance of the duties of employment. 1969 Op. Att'y Gen. No. 69-379.

RESEARCH REFERENCES

ALR. — Removal of public officers for misconduct during previous term, 42 ALR3d 691.

Damage liability of state or local public employees' union officials for unlawful work stoppage, 84 ALR3d 336.

Who are employees forbidden to strike under state enactments or state common-law rules prohibiting strikes by public employees or stated classes of public employees, 22 ALR4th 1103.

45-19-5. Action by person not a public employee to encourage strike.

Any person who is not a public employee and who shall knowingly incite, agitate, influence, coerce, persuade, or picket to urge a public employee to strike shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment not to exceed one year, or by a fine of not less than \$100.00 nor more than \$1,000.00, or both. (Ga. L. 1962, p. 459, § 4; Ga. L. 1998, p. 1155, § 1.)

Law reviews. — For article discussing right of Georgia state employees to participate in strikes, see 4 Ga. L. Rev. 110 (1969).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 257.

ALR. — Damage liability of state or local

public employees' union or union officials for unlawful work stoppage, 84 ALR3d 336.

ARTICLE 2

FAIR EMPLOYMENT PRACTICES

Editor's notes. — Ga. L. 1983, p. 1097, effective July 1, 1983, deleted the Code sections formerly codified at this article and enacted the present article. The 1983 Act

had the effect of amending or reenacting without change the Code sections comprising this article. The 1983 Act also had the effect of repealing former § 45-19-46, which

was enacted by Ga. L. 1982, p. 1253; § 2, and which became effective November 1, 1982 (but see § 1 of the 1982 Act for similar provisions given effect prior to the November 1, 1982, effective date of the Code).

Former § 45-19-46 provided for the repeal of this article on July 1, 1985.

Law reviews. — For article surveying recent developments in Georgia administrative law, see 34 Mercer L. Rev. 393 (1982).

JUDICIAL DECISIONS

Superior courts have subject matter jurisdiction over timely Title VII claims under the Civil Rights Act of 1964 filed pursuant to Equal Employment Opportunity Commission notification to the claimant that, the federal prerequisites for suit having been fulfilled, suit may be filed. *Collins v. DOT*, 208 Ga. App. 53, 429 S.E.2d 707 (1993).

Original state court jurisdiction. — The General Assembly's adoption of the Fair Employment Practices Act (FEPA), O.C.G.A. Art. 2, Ch. 19, T. 45, providing a state remedy, enforceable in state courts following

state administrative proceedings, does not and cannot preclude pursuit of a ripe and independent federal Title VII of the Civil Rights Act of 1964 action in state courts. The superior courts' appellate jurisdiction over state FEPA claims does not affect their original jurisdiction over Title VII claims. *Collins v. DOT*, 208 Ga. App. 53, 429 S.E.2d 707 (1993).

Cited in *Bleakley v. Jekyll Island-State Park Auth.*, 536 F. Supp. 236 (S.D. Ga. 1982); *Washington v. Department of Human Resources*, 759 F. Supp. 825 (M.D. Ga. 1991).

OPINIONS OF THE ATTORNEY GENERAL

To be subject of charge under O.C.G.A. Art. 2, Ch. 19, T. 45, particular state agency must be charging party's employer. 1980 Op. Att'y Gen. No. 80-72.

Under this article, a charge of discrimination may be brought only against charging party's employer. 1980 Op. Att'y Gen. No. 80-72.

Jurisdiction over charges of unlawful employment discrimination in university system. — Georgia Office of Fair Employment

Practices and Board of Regents of the University System of Georgia have concurrent jurisdiction over charge of unlawful employment discrimination in the university system. If either renders a final administrative determination, the other agency is barred from reconsidering those issues considered in earlier administrative proceeding provided same parties are involved in both proceedings. 1980 Op. Att'y Gen. No. 80-74.

RESEARCH REFERENCES

ALR. — What constitutes unfair labor practice under state public employee relations Acts, 9 ALR4th 20.

Rights of state and municipal public employees in grievance proceedings, 46 ALR4th 912.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

Employee's retention of benefits received in consideration of promise not to enforce claims under Age Discrimination in Employment Act as ratification of otherwise invalid or voidable waiver under § 7(f)(1) of act (29 USCS § 626(f)(1)), 128 ALR Fed. 577.

45-19-20. Short title.

This article shall be known and may be cited as the "Fair Employment Practices Act of 1978." (Ga. L. 1978, p. 859, § 25; Ga. L. 1983, p. 1097, § 1.)

45-19-21. Purposes and construction of article.

(a) The general purposes of this article are:

(1) To provide for execution within public employment in the state of the policies embodied in Title VII of the federal Civil Rights Act of 1964 (78 Stat. 241), as amended by the Equal Employment Opportunity Act of 1972 (86 Stat. 103), as from time to time amended, the federal Age Discrimination in Employment Act of 1967 (81 Stat. 602), as from time to time amended, and the federal Rehabilitation Act of 1973 (87 Stat. 355), as from time to time amended;

(2) To safeguard all individuals in public employment from discrimination in employment; and

(3) To promote the elimination of discrimination against all individuals in public employment because of such individuals' race, color, religion, national origin, sex, disability, or age thereby to promote the protection of their interest in personal dignity and freedom from humiliation; to make available to the state their full productive capacities; to secure the state against domestic strife and unrest which would menace its democratic institutions; to preserve the public safety, health, and general welfare; and to further the interests, rights, and privileges of individuals within the state.

(b) This article shall be broadly construed to further the general purposes stated in this Code section and the special purposes of the particular provision involved.

(c) Nothing in this article shall be construed as indicating an intent to exclude local or federal laws on the same subject matter, which laws are not inconsistent with this article.

(d) Nothing contained in this article shall be deemed to repeal any other nonconflicting law of this state relating to discrimination because of race, color, religion, national origin, sex, disability, or age. (Ga. L. 1978, p. 859, § 2; Ga. L. 1983, p. 1097, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1995, p. 1302, § 10.)

U.S. Code. — The Civil Rights Act of 1964, referred to in this section, is codified as 42 U.S.C. § 2000a et seq. The Equal Employment Opportunity Act of 1972, referred to in this section, is codified as 42 U.S.C. § 2000e et seq. The Age Discrimination in Employment Act of 1967, referred to in this section, is codified as 29 U.S.C. § 621

et seq. The Rehabilitation Act of 1973, referred to in this section, is codified as 29 U.S.C. § 701 et seq.

Law reviews. — For article "Gender and Justice in the Courts: A Report to the Supreme Court of Georgia by the Commission on Gender Bias in the Judicial System," see 8 Ga. St. U.L. Rev. 539 (1992).

JUDICIAL DECISIONS

Reference to federal decisions is appropriate in view of purposes of O.C.G.A. Art. 2, Ch. 19, T. 45. — Reference to federal decisions interpreting Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) is appropriate in view of purposes of

Act as stated in O.C.G.A. § 45-19-21. *Georgia Dep't of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981); *Georgia Bureau of Investigation v. Heard*, 166 Ga. App. 895, 305 S.E.2d 670 (1983).

OPINIONS OF THE ATTORNEY GENERAL

No repeal of "State Merit System Law" by this Act. — The statutory provisions of the "State Merit System Law", O.C.G.A. § 45-20-1 et seq., that bar discrimination in state employment, and provide a procedure

to adjudicate cases of unlawful employment discrimination have not been repealed by the "Georgia Fair Employment Practices Act," § 45-19-20 et seq. 1983 Op. Att'y Gen. No. 83-51.

RESEARCH REFERENCES

ALR. — Application of state law to sex discrimination in employment, 87 ALR3d 93.

Identification of jobseeker by race, religion, national origin, sex, or age, in "Situation Wanted" employment advertising as violation of state civil rights laws, 99 ALR3d 154.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 ALR4th 310.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap, 78 ALR4th 265.

Damages and other relief under state legislation forbidding job discrimination on account of handicap, 78 ALR4th 435.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap, 81 ALR4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap, 82 ALR4th 26.

Availability and scope of punitive damages

under state employment discrimination law, 81 ALR5th 367.

Validity, construction, and application of state enactment, order, or regulation expressly prohibiting sexual orientation discrimination, 82 ALR5th 1.

Individual liability of supervisors, managers, officers or co-employees for discriminatory actions under state Civil Rights Act, 83 ALR5th 1.

What constitutes employer's reasonable accommodation of employee's religious preferences under Title VII of Civil Rights Act of 1964, 134 ALR Fed 1.

What constitutes reverse or majority gender discrimination against males violative of federal constitution or statutes — public employment cases, 153 ALR Fed. 609.

What constitutes employment discrimination by public entity in violation of Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12132, 164 ALR Fed. 433.

Can "at-will" employee bring action for racial discrimination under 42 U.S.C.A. § 1981, 165 ALR Fed. 143.

45-19-22. Definitions.

As used in this article, the term:

(1) "Administrator" means the administrator of the Commission on Equal Opportunity provided for by Code Section 45-19-24, which agency is comprised of an Equal Employment Division and a Fair Housing Division.

(2) “Board” means the Board of Commissioners of the Commission on Equal Opportunity created by Code Section 45-19-23.

(3) “Disability” means a physical or mental impairment which substantially limits one or more of a person’s major life activities, unless an employer demonstrates that the employer is unable to accommodate reasonably to an employee’s or prospective employee’s disability without undue hardship on the conduct of the employer’s operation.

(4) “Discrimination” means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of race, color, religion, national origin, sex, handicap, or age or the aiding, abetting, inciting, coercing, or compelling of such an act or practice. This term shall not include any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons because of religion if an employer demonstrates that the employer is unable to accommodate reasonably an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s operation.

(5) “Public employer” or “employer” means any department, board, bureau, commission, authority, or other agency of the state which employs 15 or more employees within the state for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. A person elected to public office in this state is a public employer with respect to persons holding positions or individuals applying for positions which are subject to the State Merit System of Personnel Administration or any personnel merit system of any agency or authority of this state. A person elected to public office in this state is not a public employer with respect to persons holding positions or individuals applying for positions on such officer’s personal staff or on the policy-making level or as immediate advisers with respect to the exercise of the constitutional or legal powers of the office held by such officer. The term “public employer” shall include the State Merit System of Personnel Administration whether or not such agency is the immediate employer of the party or parties claiming to be aggrieved.

(6) “Public employment” means employment by any department, board, bureau, commission, authority, or other agency of the State of Georgia.

(7) “Religion” means all aspects of religious observance and practice as well as belief.

(8) “Unlawful practice” means an act or practice declared to be an unlawful practice in Code Sections 45-19-29 through 45-19-31, 45-19-32, or 45-19-45. (Ga. L. 1978, p. 859, § 1; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1992, p. 1828, § 1; Ga. L. 1995, p. 1302, § 9.)

JUDICIAL DECISIONS

Employment practices that are facially neutral. — Discrimination can involve employment practices, such as standardized tests, that are facially neutral, but in fact fall more harshly on one group than another

and cannot be justified as a business necessity. *Georgia Dep't of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981).

OPINIONS OF THE ATTORNEY GENERAL

"Employee" and "employer" defined. — An "employee" is a person who renders services to another usually for wages, salary, or financial consideration, and who, in performance of such services, is subject to direction and control of another, such other being the employer. The "employer" is that entity which has control over time, manner,

and method by which "employee" performs the task. 1980 Op. Att'y Gen. No. 80-72.

In classified service of state merit system, the employer is appointing authority or employing agency and not state merit system or State Personnel Board. 1980 Op. Att'y Gen. No. 80-72.

RESEARCH REFERENCES

ALR. — Application of state law to sex discrimination in employment, 87 ALR3d 93.

Construction and effect of state legislation forbidding job discrimination on account of physical handicap, 90 ALR3d 393.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 ALR4th 310.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap, 78 ALR4th 265.

Damages and other relief under state legislation forbidding job discrimination on account of handicap, 78 ALR4th 435.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap, 81 ALR4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap, 82 ALR4th 26.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

What constitutes religious harassment in employment in violation of Title VII of Civil Rights Act of 1964 (42 USCA § 2000e et seq.), 149 ALR Fed. 405.

45-19-23. Creation of Board of Commissioners of the Commission on Equal Opportunity; members; terms; officers; meetings; compensation of members; powers and duties of board; annual report to Governor and General Assembly; special masters' list.

(a) A Board of Commissioners of the Commission on Equal Opportunity is created. The board shall consist of nine persons. Subject to confirmation by the Senate, the members of the board shall be appointed by the Governor for three-year terms, except as otherwise provided in this subsection. Of the Governor's initial appointments, three shall be for one-year terms, three shall be for two-year terms, and three shall be for three-year terms. In the event of a vacancy during the term of any member appointed by the Governor whether by reason of death, resignation, or otherwise, the appointment of a successor by the Governor shall be only for

the remainder of the unexpired term. The membership of the board shall be representative of a fair and reasonable cross section of the population of the state and one-third of the members shall have experience in labor or Title VII law enforcement or other legal human rights experience; provided, however, that after July 1, 1993, at least three members of the board shall be representative of or have a background in realty, apartment management, or the building and contracting industry.

(b) The board shall annually elect a chair and such other officers as it deems appropriate and shall meet at least three times a year at a time and place specified in writing by the administrator. The board may also meet from time to time upon its own motion, as deemed necessary by a majority of the members thereof, for the purposes of conducting routine or special business. Each member of the board shall serve without pay; but the members who are not otherwise state officials or employees shall, while engaged in the official duties of the board, receive the same expense allowance and travel cost reimbursement which members of certain boards and commissions receive pursuant to Code Section 45-7-21.

(c) The board shall make a written report to the Governor and to the General Assembly by December 31 of each year. Such report shall advise the Governor and the members of the General Assembly of the board's activities and the administration of this article and shall make such recommendation for change, if any, as the board deems proper.

(d) The board shall assist the administrator of the Commission on Equal Opportunity in an advisory capacity in carrying out the duties and functions of the office including but not limited to matters relating to fair employment practices and the effectiveness of the state programs and operations.

(e) The board shall establish and certify to the Governor at the beginning of each fiscal year a list of not less than 12 persons, including females and minorities, licensed to practice law in Georgia, who have experience in labor law, in employment law or administrative law, from which list the Governor may select, on the basis of rotation in sequential order, special masters as provided for in Code Section 45-19-37. The board may from time to time certify to the Governor additional persons to be added to the aforementioned list. (Ga. L. 1978, p. 859, § 9; Ga. L. 1983, p. 1097, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 1992, p. 1828, § 2.)

Cross references. — Legal mileage allowance, § 50-19-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 24 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 8-24.

45-19-24. Commission on Equal Opportunity created; appointment of administrator; assignment of commission to Governor for administrative purposes.

There is created the Commission on Equal Opportunity. The Governor shall appoint an administrator of the Commission on Equal Opportunity who shall serve at the pleasure of the Governor. The Commission on Equal Opportunity shall be attached to the office of the Governor for administrative purposes only. The Commission on Equal Opportunity shall have an Equal Employment Division to assist the administrator in carrying out the provisions of this article. (Ga. L. 1978, p. 859, § 10; Ga. L. 1983, p. 1097, § 1; Ga. L. 1992, p. 1828, § 3.)

JUDICIAL DECISIONS

Cited in Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 42, 87 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 35-44.

45-19-25. Function of administrator.

The function of the administrator shall be to encourage fair treatment for public employees and to discourage unlawful discrimination in public employment. (Ga. L. 1978, p. 859, § 11; Ga. L. 1983, p. 1097, § 1.)

JUDICIAL DECISIONS

Cited in Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

45-19-26. Attorney General to be legal adviser to administrator.

The Attorney General shall be the legal adviser for the administrator. (Ga. L. 1978, p. 859, § 12; Ga. L. 1983, p. 1097, § 1.)

JUDICIAL DECISIONS

Cited in Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

OPINIONS OF THE ATTORNEY GENERAL

The Office of Fair Employment Practices does not have the authority to conduct systematic investigations into public employment. 1979 Op. Att'y Gen. No. 79-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employess, § 230 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 190-202.

45-19-27. Additional powers and duties of administrator.

In the enforcement of this article the administrator shall have the following powers and duties:

(1) To maintain an office in the City of Atlanta and such other offices within the state as the administrator may deem necessary;

(2) To meet and exercise the administrator's powers at any place within the state;

(3) Within the limitations provided by law, to appoint clerks and other employees and agents as the administrator may deem necessary, to include employees and agents to represent complainants at special master hearings as provided in Code Section 45-19-37;

(4) To cooperate with individuals and with state, local, and other agencies, both public and private, and to obtain upon request and utilize the services of all governmental departments and agencies;

(5) To cooperate with the United States Equal Employment Opportunity Commission created by Section 705 of the Civil Rights Act of 1964 (78 Stat. 241), as amended, and with other federal and local agencies in order to achieve the purposes of that act; and to cooperate with other federal and local agencies in order to achieve the purposes of this article;

(6) To accept gifts, bequests, grants, or other public or private payments on behalf of the state and to pay such moneys into the state treasury;

(7) To accept on behalf of the state reimbursement pursuant to Section 709(b) of the Civil Rights Act of 1964 (78 Stat. 241), as amended, for services rendered to assist the United States Equal Employment Opportunity Commission;

(8) To receive, initiate, investigate, seek to conciliate, and make determinations regarding complaints alleging violations of this article and to approve or disapprove plans required by the Governor to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age;

(9) To furnish technical assistance requested by persons subject to this article to further their compliance with this article or an order issued thereunder;

(10) To investigate and make studies, subject to approval by the Governor, of unlawful practices in public employment and, in connection therewith, to hold hearings, to request the attendance of persons to give testimony, to receive for the record at any such hearing written statements, documents, exhibits, and other items pertinent to the subject matter of any such hearing, and, following any such investigation or hearing, to issue such report and recommendations as will in its opinion assist in carrying out the purposes of this article;

(11) To require answers to interrogatories, examine witnesses, and require the production of documents so long as it is relevant to the investigation of a complaint;

(12) To render written reports to the Governor and the General Assembly. The reports may contain recommendations of the administrator for legislative or other action to effectuate the purposes and policies of this article;

(13) To make provision for technical and clerical assistance to the Board of Commissioners of the Commission on Equal Opportunity;

(14) To adopt, promulgate, amend, and rescind, subject to approval of the board and the Governor and after giving proper notice and hearing to all public employers pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as may be necessary to carry out the provisions of this article, including regulations requiring the posting or inclusion in advertising material of notices prepared or approved by the administrator and regulations regarding the filing, approval, or disapproval of plans to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age;

(15) To cooperate with other organizations, public and private, to discourage unlawful practices and discrimination in employment;

(16) To maintain with the United States Equal Employment Opportunity Commission status as a "deferral agency" under Section 706 of the Civil Rights Act of 1964 (78 Stat. 241), as amended, as provided by the rules and regulations of said commission or as a "referral agency" under Section 709 of the Civil Rights Act of 1964 (78 Stat. 241), as amended; and

(17) To require, pursuant to rules and regulations promulgated by the administrator under the authority of paragraph (14) of this Code section, from any state agency or department such reports and information at such times as it may deem reasonably necessary to carry out the purposes

of this article. (Ga. L. 1978, p. 859, §§ 12, 13; Ga. L. 1983, p. 1097, § 1; Ga. L. 1992, p. 6, § 45; Ga. L. 1992, p. 1828, § 4; Ga. L. 1995, p. 1302, § 10.)

U.S. Code. — The Civil Rights Act of 1964, referred to in this section, is codified as 42 U.S.C. § 2000a et seq.

JUDICIAL DECISIONS

Cited in Robinson v. Department of Cors., 211 Ga. App. 134, 438 S.E.2d 190 (1993).

OPINIONS OF THE ATTORNEY GENERAL

Powers of personnel administration commission over affirmative action plans unaffected. — The 1983 amendments to O.C.G.A. §§ 45-19-27 and 45-19-35 of the “Georgia Fair Employment Practices Act”

do not infringe on the state personnel board or the personnel administration commissioner’s responsibilities in the area of affirmative action plans. 1983 Op. Att’y Gen. No. 83-51.

45-19-28. Limitation on provisions of article relating to age discrimination.

The provisions of this article relating to discrimination in employment on the basis of age shall apply only to individuals who are at least 40 years of age but less than 70 years of age. (Ga. L. 1983, p. 1097, § 1.)

Cross references. — Age discrimination in employment generally, § 34-1-2.

45-19-29. Unlawful practices generally.

It is an unlawful practice for an employer:

- (1) To fail or refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, national origin, sex, disability, or age;
- (2) To limit, segregate, or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an individual’s status as an employee because of such individual’s race, color, religion, national origin, sex, disability, or age; or
- (3) To hire, promote, advance, segregate, or affirmatively hire an individual solely because of race, color, religion, national origin, sex, disability, or age, but this paragraph shall not prohibit an employer from voluntarily adopting and carrying out a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age

if the plan has first been filed with the administrator for review and comment for a period of not less than 30 days. (Ga. L. 1978, p. 859, § 3; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1995, p. 1302, § 10.)

Cross references. — Constitutional guarantee of freedom of religion, Ga. Const. 1983, Art. I, Sec. I, Para. III and Para. IV. Discrimination in employment on basis of

sex generally, Ch. 5, T. 34. Giving of preference to veterans, their widowed spouses, and dependents in the matter of employment in Department of Veterans Service, § 38-4-9.

JUDICIAL DECISIONS

Disparate impact treated differently from disparate treatment. — Federal decisions interpreting Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) have consistently distinguished “disparate treatment” cases from cases involving facially neutral employment standards that have “disparate impact” on minority applicants. *Georgia Bureau of Investigation v. Heard*, 166 Ga. App. 895, 305 S.E.2d 670 (1983).

Burden of proving or disproving discrimination in “disparate impact” case. — In a “disparate impact” case, all that the aggrieved employee need prove to establish a prima-facie case of discrimination is that, regardless of intent to discriminate, the employer’s otherwise facially neutral selection device screens out a disproportionate number of minorities. Once this is shown, the burden then shifts to the employer to demonstrate that, although it has discriminatory consequences, its facially neutral selection device is in fact job-related. *Georgia Bureau of Investigation v. Heard*, 166 Ga. App. 895, 305 S.E.2d 670 (1983).

Burden of proving or disproving discrimination in “disparate treatment” cases. — When dealing with subjective rather than facially-neutral and hence objective employment procedures, the case is to be treated as one involving “disparate treatment” wherein the employee’s prima-facie case is shown by evidence that the subjective decision to deny the employee a promotion was racially motivated. The employer’s rebuttal evidence must relate to defending the employee’s subjective decision as having been based upon legitimate, nondiscriminatory reasons. *Georgia Bureau of Investigation v. Heard*, 166 Ga. App. 895, 305 S.E.2d 670 (1983).

Three-part allocation of burden of proving discrimination in “disparate treatment”

case. See *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

Burden of proof in sex discrimination case. — To establish a prima facie case of “disparate treatment” where discrimination on the basis of sex is alleged the plaintiff must prove by a preponderance of the evidence that she applied for an available position for which she was qualified, but was rejected under circumstances which give rise to an inference of unlawful discrimination. *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

Race discrimination. — Where employer treats some employees less favorably than others due to race, focus is on “disparate treatment.” *Georgia Dep’t of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981).

Requisites of prima-facie case of “disparate treatment.” — Plaintiff can make out prima-facie claim of “disparate treatment” by showing (i) that plaintiff belongs to a racial minority; (ii) that plaintiff applied and was qualified for a job for which employer was seeking applicants; (iii) that, despite plaintiff’s qualifications, plaintiff was rejected; and (iv) that, after plaintiff’s rejection, the position remained open and employer continued to seek applicants from persons with complainant’s qualifications. *Georgia Dep’t of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981).

Once plaintiff establishes a prima-facie case, discriminatory intent may be inferred absent articulation of a legitimate, nondiscriminatory reason for plaintiff’s rejection. *Georgia Dep’t of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981).

Subjective evaluation against objective standards not “facially-neutral.” — Where employer’s relevant promotion device con-

sisted of a panel of supervisors who subjectively evaluated and rated each applicant's qualifications against a number of objective standards, such subjective decision-making promotional system was not such a "facially-neutral" employment practice that the proof thereof — standing alone and without further evidence authorizing a finding of discriminatory intent — will establish a prima-facie case of employment discrimination under the "discriminatory impact" theory and thereby shift the burden of proof to the employer. *Georgia Bureau of Investigation v. Heard*, 166 Ga. App. 895, 305 S.E.2d 670 (1983).

Subjective promotion procedures are to be closely scrutinized because of their susceptibility to discriminatory abuse and the more subjective the qualification sought and the more subjective the manner in which it is measured, the more difficult will be the defendant's task in meeting defendant's burden. *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

Evidence sufficient to support finding of discrimination on the basis of sex. — See *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

OPINIONS OF THE ATTORNEY GENERAL

General Assembly not "public employer." — O.C.G.A. Art. 2, Ch. 19, T. 45 prohibits discriminatory employment practices by "public employers" as defined in O.C.G.A. § 45-19-22, and therefore would not include the General Assembly nor any of its components. 1978 Op. Att'y Gen. No. 78-62.

Complainant's election in filing action. — Under the two respective statutes, O.C.G.A. §§ 45-19-29 and 45-20-4, the State Personnel Board and the Office of Fair Employment Practices (OFEP) have overlapping jurisdiction over charges of unlawful employment discrimination in the classified service; however, under O.C.G.A. § 45-19-41, if an indi-

vidual processes a claim of discrimination with either the State Personnel Board or with the OFEP and receives a final determination from either the State Personnel Board or a special master, that person cannot then attempt to process a charge with the other agency where the second charge involves any issues that were determined by the first administrative agency or that could have been included under the rules of law in the original administrative action. Where there is concurrent jurisdiction, the charging party has a choice concerning the agency to which that party will apply for relief. 1978 Op. Att'y Gen. No. 78-59.

RESEARCH REFERENCES

Am. Jur. 2d. — 45A Am. Jur. 2d, Job Discrimination, § 123 et seq.

C.J.S. — 14 C.J.S., Civil Rights, § 146 et seq., § 386 et seq.

ALR. — Discrimination because of race, color, or creed in respect of appointment, duties, compensation, etc., of schoolteachers or other public officers or employees, 130 ALR 1512.

Marriage as ground for discharge of one employed in public service other than as teacher, 135 ALR 1346.

Exclusion of or discrimination against a physician or surgeon by hospital, 37 ALR3d 645; 28 ALR5th 107.

Constitutionality of enactment or regulation forbidding or restricting employment of aliens in public employment or on public works, 38 ALR3d 1213.

Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 ALR3d 944.

Mandatory retirement of public officer or employee based on age, 81 ALR3d 811.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.

Application of state law to sex discrimination in employment, 87 ALR3d 93.

Accommodation requirement under state legislation forbidding job discrimination on account of handicap, 76 ALR4th 310.

Handicap as job disqualification under state legislation forbidding job discrimination on account of handicap, 78 ALR4th 265.

Damages and other relief under state leg-

isolation forbidding job discrimination on account of handicap, 78 ALR4th 435.

Discrimination "because of handicap" or "on the basis of handicap" under state statutes prohibiting job discrimination on account of handicap, 81 ALR4th 144.

What constitutes handicap under state legislation forbidding job discrimination on account of handicap, 82 ALR4th 26.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

Application of state law to age discrimination in employment, 51 ALR5th 1.

Availability and scope of punitive damages under state employment discrimination law, 81 ALR5th 367.

What constitutes employer's reasonable accommodation of employee's religious

preferences under Title VII of Civil Rights Act of 1964, 134 ALR Fed 1.

What constitutes religious harassment in employment in violation of Title VII of Civil Rights Act of 1964 (42 USCA § 2000e et seq.), 149 ALR Fed. 405.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — private employment cases, 150 ALR Fed. 1.

What constitutes racial harassment in employment violative of Title VII of Civil Rights Act of 1964 (42 USCA § 2000e et seq.), 156 ALR Fed. 1.

Liability of employer, under Title VII of Civil Rights Act of 1964 (42 USCA §§ 2000e et seq.) for sexual harassment of employee by customer, client, or patron, 163 ALR Fed. 445.

45-19-30. Unlawful practices in training or apprenticeship programs.

It is an unlawful practice for an employer controlling apprenticeship or other training or retraining including on-the-job training programs to discriminate against an individual because of such individual's race, color, religion, national origin, sex, disability, or age in admission to or employment in any program established to provide apprenticeship or other training or to discriminate by allowing admission or promotion to an apprenticeship or training program solely because of race, color, religion, national origin, sex, disability, or age. (Ga. L. 1978, p. 859, § 4; Ga. L. 1983, p. 1097, § 1; Ga. L. 1995, p. 1302, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 45A Am. Jur. 2d, Job Discrimination, § 316 et seq.

ALR. — Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 ALR3d 944.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.

Application of state law to sex discrimination in employment, 87 ALR3d 93.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

Application of state law to age discrimination in employment, 51 ALR5th 1.

Availability and scope of punitive damages under state employment discrimination law, 81 ALR5th 367.

45-19-31. Unlawful practices in advertisement of employment.

It is an unlawful practice for an employer to print or publish or cause to be printed or published a notice or advertisement relating to employment by such an employer indicating any preference, limitation, specification, or discrimination based on race, color, religion, national origin, sex, disability,

or age, except that such a notice or advertisement may indicate a preference, limitation, or specification based on race, color, religion, national origin, sex, disability, or age when religion, national origin, sex, disability, or age is a bona fide occupational qualification for employment. (Ga. L. 1978, p. 859, § 5; Ga. L. 1983, p. 1097, § 1; Ga. L. 1995, p. 1302, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 333 et seq. 45A Am. Jur. 2d, Job Discrimination, § 316 et seq., § 333 et seq., § 557 et seq.
C.J.S. — 14A C.J.S., Civil Rights, §§ 172, 342, 345.
ALR. — Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 ALR3d 944.

Application of state law to sex discrimination in employment, 87 ALR3d 93.
Identification of jobseeker by race, religion, national origin, sex, or age, in “Situation Wanted” employment advertising as violation of state civil rights laws, 99 ALR3d 154.
Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

45-19-32. Unlawful practice for party to violate conciliation agreement.

It is an unlawful practice for a party to a conciliation agreement made pursuant to subsection (e) of Code Section 45-19-36 to violate the terms of the agreement. (Ga. L. 1978, p. 859, § 21; Ga. L. 1983, p. 1097, § 1; Ga. L. 1986, p. 10, § 45.)

45-19-33. Different standards of compensation or different terms and conditions of employment where not based on race, color, religion, sex, national origin, disability, or age.

It is not an unlawful practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, national origin, sex, disability, or age; nor is it an unlawful practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration, or action upon the results thereof is not designed, intended, or used to discriminate because of race, color, religion, national origin, sex, disability, or age. (Ga. L. 1978, p. 859, § 7; Ga. L. 1983, p. 1097, § 1; Ga. L. 1995, p. 1302, § 10.)

RESEARCH REFERENCES

Am. Jur. 2d. — 45A Am. Jur. 2d, Job Discrimination, § 228 et seq.
C.J.S. — 14 C.J.S., Civil Rights, § 146 et seq., § 386.

ALR. — Application of state law to sex discrimination in employment, 87 ALR3d 93.
Judicial construction and application of

state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

Application of state law to age discrimination in employment, 51 ALR5th 1.

45-19-34. Hiring, employing, or selecting for training programs where religion or national origin a bona fide occupational qualification.

It is not an unlawful practice for an employer to hire and employ employees or to select an individual in any training program on the basis of religion or national origin in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal functions of that particular employer's responsibilities. (Ga. L. 1978, p. 859, § 6; Ga. L. 1983, p. 1097, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 45A Am. Jur. 2d, Job Discrimination, § 269 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 173.

ALR. — Judicial construction and applica-

tion of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

45-19-35. Use of quotas because of imbalances in employee ratios prohibited; grants of preferential treatment to certain individuals or groups not required by article; adoption of plans required by Governor to reduce imbalance; effect of article upon certain employment practices.

(a) Quotas because of imbalances in employee ratios shall not be permitted.

(b) Nothing contained in this article requires an employer to grant preferential treatment to an individual or to a group because of the race, color, religion, national origin, sex, disability, or age of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, national origin, sex, disability, or age in the state or a community, section, or other area or in the available work force in the state or a community, section, or other area.

(c) It is specifically provided that neither subsection (a) nor (b) of this Code section nor any other provision of this article shall prohibit an employer from adopting or carrying out a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age if such plan is required by the Governor and filed with and approved by the administrator prior to its final adoption and implementation.

(d) Nothing contained in this article prohibits:

(1) Minimum hiring ages otherwise provided by law;

- (2) State compliance with federal regulations;
- (3) Termination of the employment of any person who is unable or incompetent or refuses to perform the person's duties;
- (4) Any physical or medical examinations of applicants or employees which an employer requires to determine fitness for the job or position sought or held; or
- (5) An employer from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this article. (Ga. L. 1978, p. 859, § 8; Ga. L. 1983, p. 1097, § 1; Ga. L. 1995, p. 1302, § 10.)

OPINIONS OF THE ATTORNEY GENERAL

Powers of personnel administration commissioner over affirmative action plans unaffected. — The 1983 amendments to O.C.G.A. §§ 45-19-27 and 45-19-35 of the Georgia Fair Employment Practices Act,

O.C.G.A. § 45-19-20 et seq., do not infringe on the state personnel board or the personnel administration commissioner's responsibilities in the area of affirmative action plans. 1983 Op. Att'y Gen. No. 83-51.

RESEARCH REFERENCES

Am. Jur. 2d. — 45A Am. Jur. 2d, Job Discrimination, § 268 et seq., § 304 et seq.
ALR. — Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.
 Application of state law to sex discrimination in employment, 87 ALR3d 93.
 Judicial construction and application of

state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.
 Application of state law to age discrimination in employment, 51 ALR5th 1.
 Availability and scope of punitive damages under state employment discrimination law, 81 ALR5th 367.

45-19-36. Filing complaints of unlawful practice; action by administrator.

- (a) As used in this Code section, the term "respondent" means an employer charged with an alleged unlawful practice.
- (b) An individual claiming to be aggrieved by an unlawful practice or another person on behalf of an individual claiming to be aggrieved by an unlawful practice may file with the administrator a written, sworn complaint stating that an unlawful practice has been committed setting forth the facts upon which the complaint is based and setting forth facts sufficient to enable the administrator to identify the employer charged. The administrator's staff shall promptly investigate the allegations of unlawful practice set forth in the complaint and, within 15 days of filing, shall serve the respondent with a copy of the complaint. The complaint shall be barred unless filed within 180 days after the alleged unlawful practice occurs.
- (c) Within 90 days after the complaint has been filed, the administrator shall determine whether there is reasonable cause to believe the respondent

has engaged in an unlawful practice. If it is determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful practice, the administrator shall issue an order dismissing the complaint.

(d) Within ten days after receiving a copy of the order dismissing the complaint, the complainant may file with the administrator an application for reconsideration of the order. Upon such application, the administrator shall determine within 15 days whether there is reasonable cause to believe that the respondent has engaged in an unlawful practice. If it is again determined that there is no reasonable cause to believe that the respondent has engaged in an unlawful practice, the administrator shall issue an order dismissing the complaint and notifying the complainant that such complainant has the right to request a right to bring an action letter from the appropriate federal agency or petition for review in the appropriate superior court as provided for in Code Section 45-19-39.

(e) After investigation or after the review provided for in subsection (d) of this Code section, if the administrator determines that there is reasonable cause to believe that the respondent has engaged in an unlawful practice, then the administrator's staff shall first endeavor to eliminate the alleged unlawful practice by conference, conciliation, and persuasion. The terms of a conciliation agreement reached with a respondent may require the respondent to refrain from the commission of unlawful discriminatory practices in the future and make such further provisions as may be agreed upon between the administrator and the respondent. If a conciliation agreement is entered into, the administrator shall issue and serve on the complainant a final order stating its terms. Except for the terms of the conciliation agreement, neither the administrator nor any agent thereof shall make public without the written consent of the complainant and the respondent information concerning efforts in the particular case to eliminate an unlawful practice by conference, conciliation, or persuasion, whether or not there is a determination of reasonable cause or a conciliation agreement.

(f) In the event the administrator determines that there is reasonable cause to believe that an agency or authority has engaged in an unlawful practice as defined in this article and the administrator's staff is unable to eliminate the alleged unlawful practice by conference, conciliation, and persuasion, the administrator shall refer the complaint to a special master as provided for in Code Section 45-19-37.

(g) At the expiration of one year from the date of a conciliation agreement and at other times in its reasonable discretion, the administrator's staff may investigate whether the terms of the agreement have been and are being complied with by the respondent. The administrator shall report the findings to the complainant and respondent. If the administrator finds reasonable cause to believe that the agreement has been breached, the complainant may seek enforcement of the agreement in the superior

court of the county in which the alleged violation took place or in the county of the respondent's residence.

(h) The administrator shall issue to the complainant and the respondent, 90 days from the date the complaint was filed and every 30 days thereafter, a status report summarizing any action taken with respect to the complaint. The status reports required by this subsection shall be issued until final resolution of the complaint. (Ga. L. 1978, p. 859, §§ 12, 14; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1985, p. 149, § 45; Ga. L. 1986, p. 10, § 45; Ga. L. 1989, p. 1210, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, deleted a comma between “employer” and “charged” in the first sentence in subsection (b).

JUDICIAL DECISIONS

Refusal to take polygraph examination. — Dismissal of public employees from employment upon refusal to take a polygraph examination is permissible if the employee is informed: (1) that the questions will relate specifically and narrowly to the performance of official duties; (2) that the answer cannot be used against the employee in any subsequent criminal prosecution; and (3) that the penalty for refusal is dismissal. *Moss v. Central State Hosp.*, 179 Ga. App. 359, 346 S.E.2d 580 (1986).

Application of statute of limitations to federal actions. — O.C.G.A. § 45-19-36 with its 180 day statute of limitations applies to employment discrimination claims brought against state employees under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. *Champion v. Georgia Bureau of Investigation*, 568 F. Supp. 712 (N.D. Ga. 1983).

The limitations period of O.C.G.A. § 45-19-36 is not applicable to 42 U.S.C. § 1983 public employment discrimination actions. *Cook v. Ashmore*, 579 F. Supp. 78 (N.D. Ga. 1984).

Since the federal civil rights statute, 42 U.S.C. § 1983, does not contain its own statute of limitations, it is well settled that the period of limitations to be used is the most analogous one provided by state law. The applicable limitations period for first amendment and due process claims is not the six-month period provided by O.C.G.A. § 45-19-36; the most analogous limitations period provided by Georgia law for these claims appears to be either the one provided by O.C.G.A. § 9-3-22 (enforcement of statutory rights) or the one provided by O.C.G.A. § 9-3-33 (injuries to person or reputation). *Cook v. Ashmore*, 579 F. Supp. 78 (N.D. Ga. 1984).

The appropriate statute of limitations to be borrowed in a federal civil rights action under 42 U.S.C. § 1983 is O.C.G.A. § 9-3-22 (rights under statutes), not O.C.G.A. § 45-19-36. *Solomon v. Hardison*, 746 F.2d 699 (11th Cir. 1984); *East Cent. Health Dist. v. Brown*, 752 F.2d 615 (11th Cir. 1985).

Cited in *Georgia Dep't of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981); *Jordan v. Board of Regents*, 583 F. Supp. 23 (S.D. Ga. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq. 45A Am. Jur. 2d, Job Discrimination, § 1205 et seq., § 2015 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 146 et seq., § 386, § 448 et seq.

ALR. — Acquiescence or delay as affecting rights of public employee illegally dis-

charged, suspended, or transferred, 145 ALR 767.

Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination, 40 ALR3d 1290.

Requiring apology as “affirmative action”

or other form of redress under State Civil Rights Act, 85 ALR3d 402.

Construction and application of Em-

ployee Polygraph Protection Act of 1988 (29 USCA § 2001 et seq.), 154 ALR Fed. 315.

45-19-37. Appointment of special master to conduct hearing on complaint; procedure.

(a) Unless the administrator has issued an order dismissing the complaint or stating the terms of a conciliation agreement within 90 days after a complaint is filed, the administrator shall request that the Governor appoint, from the list provided for by subsection (e) of Code Section 45-19-23, a special master to conduct a hearing in accordance with this article. Not more than 15 working days after such request, the Governor shall select and appoint a special master who must be an attorney licensed to practice law in this state. The special master shall have all of the power and authority granted to agencies in conducting hearings and rendering final orders under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," including but not limited to subpoena power.

(b) Not more than seven days after the appointment of the special master, the administrator shall serve on the respondent and on the complainant or the complainant's attorney by registered or certified mail or statutory overnight delivery a written notice together with a copy of the complaint requiring the respondent to answer the charges contained therein at a hearing before the special master at a time and place specified in the notice. Such notice must contain all general and specific charges against the respondent.

(c) The respondent shall serve an answer with the special master by registered or certified mail or statutory overnight delivery not more than 20 working days after receipt of the notice of hearing, which 20 working days may be extended by the special master in the special master's discretion for an additional time not to exceed ten working days. The respondent's answer must show by a certificate of service that the respondent has served a copy of the answer on the complainant or the complainant's attorney at the last known address of the complainant or the complainant's attorney where complainant is represented by an attorney. Upon leave of the special master, the complainant may amend the charges contained in the notice of hearing. The respondent may amend an answer at any time prior to the hearing or, upon leave of the special master, may amend thereafter. No final order shall be issued unless the respondent has had the opportunity of a hearing on the charges contained in the notice of hearing or amendment on which the final order is based. If the respondent fails to answer the complaint, the special master may enter the respondent's default. Unless the default is set aside for good cause shown, the hearing may proceed on the evidence in support of the complaint.

(d) At any time after a notice of hearing is served upon a respondent, discovery shall be authorized in the same manner and fashion as discovery

is permitted under Code Sections 9-11-26 through 9-11-37. Any order contemplated in Code Sections 9-11-26 through 9-11-37 may be issued by the special master. Judicial enforcement of any such order may be obtained by the complainant or respondent in the same manner as is provided for the enforcement of final orders in Code Section 45-19-40.

(e) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the hearing, may examine and cross-examine witnesses and the complainant, and may offer evidence. The complainant and, at the discretion of the special master, any other person may intervene, examine and cross-examine witnesses, and present evidence.

(f) Efforts at conference, conciliation, and persuasion shall not be received in evidence.

(g) Testimony taken at the hearing shall be under oath and shall be stenographically or otherwise recorded by a certified court reporter. After the hearing, the special master at the special master's discretion may take further evidence or hear arguments upon notice to all parties with an opportunity to be present.

(h) Except as otherwise specifically provided for in this article, all proceedings of the special master shall be conducted as provided for with respect to contested cases in Chapter 13 of Title 50.

(i) A complainant may retain at the complainant's own expense private counsel to represent the complainant in any proceeding provided for under this article; however, the complainant may utilize the services of an individual employed by the administrator pursuant to paragraph (3) of Code Section 45-19-27 in presenting the complainant's case before the special master. (Ga. L. 1978, p. 859, § 1; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 2000, p. 1589, § 3.)

The 2000 amendment, effective July 1, 2000, and applicable with respect to notices delivered on or after July 1, 2000, substituted

"certified mail or statutory overnight delivery" for "certified mail" in subsections (b) and (c).

JUDICIAL DECISIONS

Cited in Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 397-399. 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 450 et seq. 73A C.J.S., Public Administrative Law and Procedure, §§ 115, 116, 134-142.

ALR. — Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination, 40 ALR3d 1290.

45-19-38. Findings, conclusions, and order of special master generally; order to cease and desist from unlawful practice and to take remedial action.

(a) If the special master determines that the respondent has not engaged in an unlawful practice, the special master shall state the special master's findings of fact and conclusions of law and shall issue a final order, within 30 days after the hearing unless, for good cause shown, such time is extended by the Governor, dismissing the complaint.

(b) If the special master determines that the respondent has engaged in an unlawful practice, the special master shall state the special master's findings of fact and conclusions of law and shall issue a final order, within 30 days after the hearing unless, for good cause shown, such time is extended by the Governor, requiring the respondent to cease and desist from the unlawful practice and to take such remedial action as in the judgment of the special master will carry out the purposes of this article.

(c) Remedial action under this Code section may include but is not limited to:

(1) Hiring, reinstatement, or upgrading of employees with or without back pay. No award of back pay shall be ordered pursuant to this article with respect to any period more than two years prior to the date of the filing with the administrator of the complaint with respect to which such award of back pay is ordered. Interim earnings, unemployment benefits, workers' compensation benefits, or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable;

(2) Admission or restoration of individuals to participate in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program and the utilization of objective criteria in the admission of individuals to such programs;

(3) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent;

(4) Reporting as to the manner of compliance;

(5) Posting notices in conspicuous places in the respondent's place of operation in the form prescribed by the administrator or special master;

(6) Restoration of employment benefits not otherwise specified in this Code section; or

(7) Recommending to the Governor that the respondent be required to adopt and file with the administrator, within a specified time limitation, for the administrator's approval a plan to fill vacancies or hire new employees in a manner to eliminate or reduce imbalance in employment with respect to race, color, disability, religion, sex, national origin, or age.

(d) Any monetary award ordered pursuant to this article shall be for actual damages only.

(e) The respondent shall comply without delay with the terms and conditions of such a final order. (Ga. L. 1978, p. 859, § 16; Ga. L. 1983, p. 1097, § 1; Ga. L. 1995, p. 1302, § 10.)

JUDICIAL DECISIONS

Attorney's fees. — There is no relationship between O.C.G.A. § 45-19-38(d) and O.C.G.A. § 45-19-39(c). The reference to "this article" in O.C.G.A. § 45-19-38(d) relates only to the remedial award of the special master; the provision of O.C.G.A. § 45-19-39(c) with respect to attorney's fees provides a remedy over and above that of the special master and is not governed by O.C.G.A. § 45-19-38(d). *Robinson v. Department of Cors.*, 211 Ga. App. 134, 438 S.E.2d 190 (1993).

O.C.G.A. § 45-19-38(c), in context, inherently authorizes the special master to award attorney's fees. *Robinson v. Department of Cors.*, 211 Ga. App. 134, 438 S.E.2d 190 (1993).

Award of attorney's fees discretionary. — O.C.G.A. § 45-19-38(d) vests the special master with sufficient discretion to award attorney fees as a part of making the claimant whole for the injuries suffered, even apart from O.C.G.A. § 45-19-39(c). *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

Award of attorney's fees only when incurred. — Appellant was not authorized to recover attorney's fees because appellant had incurred none, and no successful claimant in a Fair Employment Practices Act (FEPA), O.C.G.A. § 45-19-20 et seq., case can recover attorney's fees when none were

actually incurred unless and until the General Assembly authorizes a recovery. *Finney v. Department of Cors.*, 263 Ga. 301, 431 S.E.2d 361 (1993).

Issue of remedial action is separate from attorney's fees. — The issue of entitlement to recovery of attorney's fees under O.C.G.A. § 45-19-39(c) is a separate issue from entitlement to a recovery of attorney's fees in a special master proceeding. *Finney v. Department of Cors.*, 263 Ga. 301, 434 S.E.2d 45 (1993).

Incumbents not to be removed to remedy wrong. — When an order instating the person discriminated against requires an "innocent person" to step down from this position, alternative remedies must be considered because of the expected resistance from and sense of unfairness to the incumbents of jobs who were not themselves engaged in discrimination and who had settled expectations in their jobs. *Kilmark v. Board of Regents*, 175 Ga. App. 857, 334 S.E.2d 890 (1985).

Special master's findings held without probative evidentiary support. — See *Council v. Board of Regents*, 186 Ga. App. 629, 368 S.E.2d 167, cert. denied, 186 Ga. App. 917, 368 S.E.2d 167 (1988).

Cited in Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 463-470. 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 457 et seq.

ALR. — Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination, 40 ALR3d 1290.

Recovery of damages as remedy for wrong-

ful discrimination under state or local civil rights provisions, 85 ALR3d 351.

Requiring apology as "affirmative action" or other form of redress under State Civil Rights Act, 85 ALR3d 402.

Right of prevailing defendant to recover attorney's fees under § 706(k) of Civil Rights Act of 1964 (42 USCS § 2000e-5 (k)), 134 ALR Fed 161.

Reductions to back pay awards under Title

VII of Civil Rights Act of 1964 (42 USCS
§ 2000e et seq.), 135 ALR Fed 1.

45-19-39. Appeal to superior court of final order of special master or complaint dismissed by administrator.

(a) Any party to a hearing before a special master or a complainant whose complaint has been dismissed by the administrator may appeal any adverse final order of a special master by filing a petition for review in the superior court in the county in which the alleged unlawful practice occurred or in the superior court of the residence of the respondent within 30 days of the issuance of the final order. Neither the administrator nor the special master shall be a named party; however, the administrator must be served with a copy of the petition for review. Within 30 days after the petition is served on the administrator, the administrator shall forward to the court a certified copy of the record of the hearing before the special master, including the transcript of the hearing before the special master and all evidence, administrative pleadings, and orders, or the entire record if no hearing has been held. For good cause shown, the court may require or permit subsequent corrections or additions to the record. All appeals for judicial review shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; provided, however, that if any provisions of Chapter 13 of Title 50 conflict with any provision of this article, this article controls. An individual employed by the administrator pursuant to paragraph (3) of Code Section 45-19-27 shall not have the authority to represent the complainant in any appeal to superior court of a final order of the special master or in any proceeding in any court, except to secure judicial enforcement of preliminary procedural orders of a special master.

(b) The court shall not substitute its judgment for that of the special master as to the weight of the evidence on questions of fact. The court may affirm a final order of the special master or remand the case for further proceedings. The court may reverse or modify the final order if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Not supported by substantial evidence, which shall mean that the record does not contain such relevant evidence as a reasonable mind might accept as adequate to support said findings, inferences, conclusions, or decisions; or

(6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) If, upon judicial review of any order of a special master or in a proceeding in which a complainant seeks enforcement of a conciliation agreement, the court rules in favor of the complainant, then the court may in its discretion render an award of reasonable attorney's fees and costs of litigation in the superior court to the complainant. (Ga. L. 1978, p. 859, § 17; Ga. L. 1983, p. 1097, § 1.)

JUDICIAL DECISIONS

Language of O.C.G.A. § 45-19-39 is virtually identical to language from federal cases interpreting federal Administrative Procedure Act, U.S.C.S. § 553. See Georgia Dep't of Human Resources v. Montgomery, 248 Ga. 465, 284 S.E.2d 263 (1981).

Attorney's fees. — There is no relationship between O.C.G.A. §§ 45-19-38(d) and 45-19-39(c). The reference to "this article" in O.C.G.A. § 45-19-38(d) relates only to the remedial award of the special master; the provision of O.C.G.A. § 45-19-39(c) with respect to attorney's fees provides a remedy over and above that of the special master and is not governed by O.C.G.A. § 45-19-38(d). Robinson v. Department of Cors., 211 Ga. App. 134, 438 S.E.2d 190 (1993).

Where the superior court denied attorney's fees based on the erroneous assumption that it was precluded from awarding fees because the attorney was being compensated by the Office of Fair Employment Practices under O.C.G.A. § 45-19-27(3), the case was remanded to the court for exercise of its discretion pursuant to O.C.G.A. § 45-19-39(c). Robinson v. Department of Cors., 211 Ga. App. 134, 438 S.E.2d 190 (1993).

Where the trial court had ruled in favor of an employee on the employer's appeal of the order of the special master in an employer discrimination case, but the court failed to exercise its discretion to determine whether the employee was entitled to attorney's fees for judicial review of the master's order pursuant to O.C.G.A. § 45-19-39(c); the case was remanded to the trial court for the exercise of its discretion in regard thereto. Department of Cors. v. Finney, 212 Ga. App. 436, 442 S.E.2d 12 (1994).

Issue of remedial action is separate from attorney's fees. — The issue of entitlement to recovery of attorney's fees under O.C.G.A. § 45-19-39(c) is a separate issue from entitlement to a recovery of attorney's fees in a special master proceeding. Finney v. Department of Cors., 263 Ga. 301, 434 S.E.2d 45 (1993).

Superior courts have subject matter jurisdiction over timely Title VII claims under the Civil Rights Act of 1964 filed pursuant to Equal Employment Opportunity Commission notification to the claimant that, the federal prerequisites for suit having been fulfilled, suit may be filed. Collins v. DOT, 208 Ga. App. 53, 429 S.E.2d 707 (1993).

Original state court jurisdiction. — The General Assembly's adoption of the Fair Employment Practices Act (FEPA), O.C.G.A. § 45-19-20 et seq., providing a state remedy, enforceable in state courts following state administrative proceedings, does not and cannot preclude pursuit of a ripe and independent federal Title VII of the Civil Rights Act of 1964, 42 U.S.C.S., action in state courts. The superior courts' appellate jurisdiction over state FEPA claims does not affect their original jurisdiction over Title VII claims. Collins v. DOT, 208 Ga. App. 53, 429 S.E.2d 707 (1993).

Cited in Georgia Bureau of Investigation v. Heard, 166 Ga. App. 895, 305 S.E.2d 670 (1983); Collier v. Department of Human Resources, 196 Ga. App. 843, 397 S.E.2d 632 (1990); Board of Regents v. Cohen, 197 Ga. App. 463, 398 S.E.2d 758 (1990); Board of Regents of the Univ. Sys. of Ga./Albany State College v. Moore, 210 Ga. App. 623, 436 S.E.2d 789 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 420 et seq., § 619.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 172-207.

45-19-40. Entry of court judgment based upon final order of administrator or special master; notification of parties; effect of judgment.

Any person affected by a final order of the administrator or a special master may file in the superior court of the county of the residence of the respondent a certified copy of a final order of the administrator or of a special master unappealed from or of a final order of a special master affirmed upon appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court. (Ga. L. 1978, p. 859, § 23; Ga. L. 1983, p. 1097, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15 Am. Jur. 2d, Civil Rights, § 15 et seq.

C.J.S. — 14A C.J.S., Civil Rights, § 462.

45-19-41. Administrator to have exclusive jurisdiction over claims under article; final determination of claim bars further state actions.

The administrator shall have exclusive jurisdiction over any claim of any unlawful practice under this article. A final determination of a claim alleging an unlawful practice under this article shall exclude any other action or proceeding brought by the same person based on the same complaint, except for any remedies which may be available under the United States Constitution and federal laws. (Ga. L. 1978, p. 859, § 19; Ga. L. 1983, p. 1097, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Concurrent jurisdiction of Office of Fair Employment Practices and State Personnel Board. — The Georgia Office of Fair Employment Practices and the State Personnel Board still have concurrent jurisdiction over charges of unlawful discrimination. 1983 Op. Att'y Gen. No. 83-51.

If a charging party files a charge of discrimination with either the Georgia Office of Fair Employment Practices or the State

Personnel Board, the other agency may take jurisdiction over that charge while it is pending with the first agency. 1983 Op. Att'y Gen. No. 83-51.

Exclusive jurisdiction of administrator. — The administrator does not have exclusive jurisdiction over any claim cognizable under the "Fair Employment Practices Act", but merely has exclusive jurisdiction over those claims which are in fact filed with the Geor-

gia Office of Fair Employment Practices under the provisions of that Act. 1983 Op. Att'y Gen. No. 83-35.

Jurisdiction over claim filed with other governmental entity. — The Georgia Office of Fair Employment Practices is free, if it chooses to do so, to assume jurisdiction over a claim which is filed under the provisions of the "Fair Employment Practices Act" notwithstanding the fact that what is essentially the same grievance is already pending before the Board of Regents of the University System of Georgia. 1983 Op. Att'y Gen. No. 83-35.

Issue litigated before one agency may not

be relitigated before another. — The 1983 amendment to O.C.G.A. § 45-19-41 does not affect the legal doctrine that issues resolved before an administrative tribunal cannot be relitigated in a separate action or before another administrative tribunal. 1983 Op. Att'y Gen. No. 83-51.

A final determination on the merits by either the Georgia Office of Fair Employment Practices or Board of Regents of the University System of Georgia would bar the other from reconsidering the same issue between the same parties. 1983 Op. Att'y Gen. No. 83-35.

45-19-42. Procurement of violation of article by person not subject thereto not a defense.

It shall not be a defense to a violation of this article by any person subject to this article that the violation was requested, sought, or otherwise procured by a person not subject to this article. (Ga. L. 1978, p. 859, § 22; Ga. L. 1983, p. 1097, § 1.)

45-19-43. Access of administrator or designee to premises, records, and documents; persons required to make and keep employment records; application for relief from order due to hardship; unlawful for administrator or employee of administrator to make information public.

(a) In connection with an investigation of a complaint of an unlawful practice filed under this article, the administrator or the administrator's designee shall have access at any reasonable time to premises, records, and documents relevant to the complaint and shall have the right to examine, photograph, and copy evidence.

(b) Any person subject to this article shall:

(1) Make and keep such records as may be prescribed by rules and regulations of the administrator which are necessary and relevant to the determination of whether an unlawful practice has been or is being committed; and

(2) Make such reports therefrom as the administrator shall prescribe by rules and regulations which are reasonable, necessary, or appropriate for the enforcement of this article or orders or regulations under this article.

(c) If a person fails to permit access, examination, photographing, or copying or fails to make or keep records or reports as required by this Code section, the administrator may issue an order requiring compliance. Upon a failure to comply with the order of the administrator, the administrator may apply to the superior court for an order directing compliance.

(d) The administrator, by regulation, shall require each person subject to this article who controls an apprenticeship or other training program to keep all records reasonably necessary to carry out the purposes of this article, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received. Such records shall be furnished to the administrator upon the administrator's request. The administrator may also request and receive a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program.

(e) Records and reports required by the administrator under this Code section shall conform as closely as practicable to similar records and reports required by federal law and to customary record-keeping practices.

(f) An employer or other person who believes that the application to them of an order issued under this article would result in undue hardship may apply to the administrator for relief from the application of the order. If the administrator finds that the application of the regulation or order to the employer or person in question would impose an undue hardship, the administrator may grant appropriate relief.

(g) With respect to a particular employer or person, it is unlawful without the employer's or the person's consent for the administrator or an employee of the administrator to make public information obtained by the administrator or the administrator's employees pursuant to the administrator's authority under this Code section, except such information as shall reasonably be necessary to the conduct of a proceeding under this article. (Ga. L. 1978, p. 859, § 18; Ga. L. 1983, p. 1097, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

The Office of Fair Employment Practices does not have the authority to conduct systematic investigations into public employment. 1979 Op. Att'y Gen. No. 79-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 135 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 76-86.

ALR. — Public officer's privilege as to statements made in connection with hiring and discharge, 26 ALR3d 492.

45-19-44. Unlawful practices punishable by civil fine.

(a) It shall be an unlawful practice for a person willfully to:

(1) Make public with respect to a particular employer or person without the employer's or person's consent information obtained by the administrator or the administrator's employees pursuant to their authority under Code Section 45-19-41, except as shall reasonably be necessary to carry out the provisions of this article;

(2) Retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this article or because the person has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing concerning an unlawful practice under this article;

(3) Aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this article;

(4) Obstruct or prevent a person from complying with this article or with any order issued under this article;

(5) Resist, prevent, impede, or interfere with the administrator or any of his representatives, employees, or with a special master in the lawful performance of duty under this article; provided, however, that it shall not be a violation of this article for anyone to challenge or resist any action by the administrator or any of his employees or by a special master when there is a good faith belief that the administrator is, or his employees are, or the special master is acting unlawfully or acting in excess of statutory authority; or

(6) Initiate frivolous and unwarranted charges of discrimination against a public employer.

(b) A violation of this Code section shall not be deemed a crime; but any person who willfully violates this Code section may be punished by a civil fine not to exceed \$1,000.00. (Ga. L. 1978, p. 859, § 24; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1992, p. 6, § 45.)

RESEARCH REFERENCES

<p>ALR. — Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 ALR3d 351.</p>	<p>Availability and scope of punitive damages under state employment discrimination law, 81 ALR5th 367.</p>
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45-19-45. Unlawful conspiracies.

It shall be an unlawful practice for a person or for two or more persons to conspire:

(1) To retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this article or because the person has made a charge, filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing concerning an unlawful practice under this article;

(2) To aid, abet, incite, compel, or coerce a person to engage in any of the acts or practices declared unlawful by this article;

(3) To obstruct or prevent a person from complying with this article or any order issued under this article;

(4) To resist, prevent, impede, or interfere with the administrator or any of his employees or a special master in the lawful performance of duty under this article; provided, however, that it shall not be a violation of this article for anyone to challenge or resist any action by the administrator or any of his employees or a special master when there is a good faith belief that the administrator or his employees or a special master is acting unlawfully or acting in excess of his statutory authority; or

(5) To initiate willfully frivolous and unwarranted charges of discrimination against a public employer. (Ga. L. 1978, p. 859, § 20; Ga. L. 1983, p. 1097, § 1; Ga. L. 1984, p. 22, § 45.)

RESEARCH REFERENCES

ALR. — When does statute of limitations begin to run against civil action or criminal prosecution for conspiracy, 62 ALR2d 1369.

45-19-46. Overtime compensation.

(a) As used in this Code section, the term:

(1) “Overtime hours” means hours worked by a public employee for which payment of time and one-half overtime compensation or time and one-half compensatory time is required pursuant to the Fair Labor Standards Act, 29 U.S.C.A. 207, et seq.

(2) “Public employee” or “applicant” means a public employee or applicant for public employment who is, or if hired would be, entitled to payment of time and one-half overtime compensation or time and one-half compensatory time for overtime hours, pursuant to the Fair Labor Standards Act, 29 U.S.C.A. 207, et seq.

(b) No public employer shall require that a public employee or applicant agree, as a term and condition of employment, to receive neither time and one-half overtime compensation nor time and one-half compensatory time for overtime hours.

(c) Nothing in this Code section shall prohibit a public employer from providing time and one-half compensatory time in lieu of cash overtime payment, or from exercising any other optional payment plan or method authorized by the Fair Labor Standards Act, 29 U.S.C.A. 207, et seq., including, but not limited to, the fluctuating work week method of overtime payment. (Code 1981, § 45-19-46, enacted by Ga. L. 1998, p. 622, § 1.)

Editor’s notes. — This Code section formerly related to repeal date of an article relating to fair employment practices and was enacted by Ga. L. 1982, p. 1253, § 2 and

repealed by Ga. L. 1983, p. 1097, § 1. See Ga. L. 1982, p. 1253, § 1, for similar provisions in effect prior to Code enactment.

CHAPTER 20

PERSONNEL ADMINISTRATION

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45-20-2.	Definitions.	45-20-15.	Confidentiality of information received by staff in counseling; exceptions.
45-20-3.	Duties and functions of State Personnel Board generally; compensation; quorum.	45-20-16.	Rules for accrual of leave, holidays, and compensation for closing of state offices; utilization of accumulated sick leave; conversion to and use of personal leave; disapproval of sick leave; procedure for contesting disapproval.
45-20-3.1.	Rule-making procedure.	45-20-17.	Interdepartmental transfers.
45-20-4.	Creation of commissioner of personnel administration; appointment; compensation; powers and duties; appointment and prescription of duties of deputy commissioner and other assistants.	45-20-18.	Loss of eligibility for wage incentive payment due to abuse of member of public.
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45-20-6.	Composition of classified and unclassified service; effect of exclusion from classified service on eligibility for membership in Employees' Retirement System of Georgia; working test period before obtaining merit system protection.	45-20-20.	Eligible employees must register with Selective Service System; exemptions.
45-20-7.	Employees in legislative branch authorized to become covered employees; procedure.	45-20-21.	Performance management system provided for classified employees.
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45-20-11.	Audits of merit system; reports of audit findings.		
45-20-12.	Implementation of public management certificate program.		
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Article 2

Leaves of Absence

45-20-30.	Leave of absence for blood donation.
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Article 3

Voluntary Deductions from Wages or Salaries of State Employees for Benefit of Charitable Organizations

45-20-50.	Purpose of article.
45-20-51.	Definitions.
45-20-52.	State Personnel Board as policy-setting body for administration of article; rules and regulations for implementation of article.

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- Sec.
45-20-53. Deduction from salaries or wages for contribution to charitable organizations.
- 45-20-54. Disclosure of amounts or designations of authorized charitable deductions; pressure, coercion, or intimidation of employee with reference to deductions.
- 45-20-54.1. Promulgation of regulations regarding distribution of deducted funds; disposition of undesignated funds.
- 45-20-55. Reimbursement of cost of making deductions and remitting proceeds; delegation of activities related to management of funds.
- 45-20-56. Deduction and transmittal of funds as privilege; immunity from liability to employee or charitable organization for errors, omissions, or decisions regarding deductions; board as sole judge of eligibility of charitable organizations.

Article 4

Employee Assistance Program

- 45-20-70. "Employee assistance program" defined.

- Sec.
45-20-70.1. Program authorized.
- 45-20-71. Confidentiality of program related records or activities.

Article 5

Random Drug Testing of Employees in High-risk Jobs

- 45-20-90. Definitions.
- 45-20-91. Determination of employees subject to testing.
- 45-20-92. Rules adopted by State Personnel Board; policies adopted by department or agency heads; certification of testing laboratories.
- 45-20-93. Grounds for termination from employment.

Article 6

Drug Testing for State Employment

- 45-20-110. Definitions.
- 45-20-111. Analysis of positions warranting established test; testing requirements, cost, and procedure; disqualification from employment for refusing test or showing positive results.

Cross references. — Disaster Volunteer Leave Act, § 38-3-90 et seq. Rules of the State Personnel Board, Official Compilation of

the Rules and Regulations of the State of Georgia, State Personnel Board, Chapter 478-1.

JUDICIAL DECISIONS

Regulations create entitlement to promotion. — O.C.G.A. § 45-20-1 and Rules 4 and 14 of the Rules and Regulations of the State Personnel Board create a mutually recognizable entitlement, and one is entitled to a reasonable expectation that where one per-

forms the duties and responsibilities of a human services program manager, one will be classified as such and will receive an increase in benefits and pay in accordance with this classification. *Brown v. Ledbetter*, 569 F. Supp. 170 (N.D. Ga. 1983).

ARTICLE 1

MERIT SYSTEM GENERALLY

45-20-1. Purposes; principles.

(a) It is the purpose of this article to establish in the state a system of personnel administration which will attract, select, and retain the best employees based on merit, free from coercive political influences, with incentives in the form of equal opportunities for all; which will provide technically competent and loyal personnel to render impartial service to the public at all times and to render such service according to the dictates of ethics and morality; and which will remove unnecessary and inefficient employees. It is specifically the intent of the General Assembly to promote this purpose by allowing agencies greater flexibility in personnel management so as to promote the overall effectiveness and efficiency of state government. To this end, and in accordance with Code Sections 45-20-2 and 45-20-6, all positions filled after July 1, 1996, shall be included in the unclassified service of the state merit system, except as provided in Code Section 15-11-24.3. It is also specifically the intent of the General Assembly that employees in the classified service prior to July 1, 1996, shall continue to be covered employees in the classified service and shall remain subject to the rules and regulations of the state merit system so long as they remain in covered positions or as otherwise provided by law. It is further specifically the intent of the General Assembly that state government operate within a framework of consistent personnel policies and practices across all state agencies and entities and that the state's most valued resource, its employees, be managed in a manner to promote work force productivity and sound business practices.

(b) In order to achieve these purposes, it is the policy of the state that agencies treat all employees, whether included in the classified or unclassified service, in accordance with the following principles:

(1) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, national origin, sex, age, disability, religious creed, or political affiliations. This "fair treatment" principle includes compliance with all state and federal equal employment opportunity and nondiscrimination laws;

(2) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial employment;

(3) Providing equitable and adequate compensation based on merit, performance, job value, and competitiveness within applicable labor markets;

(4) Training employees, as needed, to assure high quality performance and to provide work force skills needed to maintain and advance the state's goals and objectives;

(5) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance where possible and appropriate, and separating employees whose performance is inadequate; and

(6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

(c) With respect to employees in the unclassified service, it shall be the responsibility of the state merit system to perform the following functions:

(1) Establish and maintain a state-wide system of pay ranges for all job classes;

(2) Define common job classes, establish associated minimum qualifications for those classes and assign those classes to appropriate pay ranges;

(3) Develop and maintain a common employment application form to be used by all applicants for state employment, which form may be supplemented as necessary by agencies in seeking information about agency job classes;

(4) Serve as the central contact point for all potential employees in order to streamline state-wide recruiting for applicants, to provide for a state-wide applicant data base, to refer applicants to agencies, and make applicant data available to agencies for review and consideration;

(5) Upon request, develop, validate, or develop and validate applicant screening devices being utilized by agencies;

(6) Upon request, administer screening devices on behalf of agencies;

(7) Make employment related training available to agencies and allow agencies the opportunity to provide input into the nature and scope of said training programs;

(8) In consultation with agencies, establish state-wide model standards and processes and best practices criteria which agencies shall use in developing internal processes for classification, compensation, pay for performance, and performance management, including processes involved in defining job classes, establishing and applying associated minimum qualifications, assigning jobs to appropriate state-wide pay ranges, developing and applying applicant screening methods, and measuring worker effectiveness;

(9) Audit agencies' processes as referred to in paragraph (8) of this subsection and report findings annually to the Governor and the General

Assembly in conjunction with an annual report on the overall status of the state work force;

(10) Serve as consultant to agencies on work force planning and effective work force strategies, provide technical support assistance, and direct services to agencies as requested; and

(11) Maintain and make available to the public at large a state-wide central registry of employment vacancies and job announcements in state government as provided to the state merit system by agencies.

(d) With respect to employees in the unclassified service, it shall be the responsibility of the employing agency to perform the following functions:

(1) Within state-wide human resource standards, processes, and best practices criteria, define agency unique job classes, establish and apply associated qualifications for those job classes, and assign those job classes to pay ranges on an appropriate state-wide compensation plan;

(2) Allocate agency positions to defined job classes;

(3) Recruit and screen applicants for job vacancies;

(4) Develop and administer appropriate job applicant screening devices to ensure the integrity of the hiring process; and

(5) Develop agency unique policies to ensure compliance with all applicable employment related state and federal laws.

(e) Subsections (c) and (d) of this Code section shall not apply to the legislative or judicial branches, to the board of regents, or to any agency which employed no classified employees as of July 1, 1996.

(f) Each agency shall develop an annual work force plan according to state-wide criteria and guidelines and shall provide a report of such plan annually to the state merit system for incorporation into the state-wide work force plan to be submitted to the Governor and the General Assembly.

(g) In the event agencies do not use a competitive civil service examination to fill some or all of their unclassified positions, it is expressly the intent of the General Assembly that appropriate consideration be given to veterans as defined under Article IV, Section III, Paragraph II of the Constitution of Georgia and Article 2 of Chapter 2 of this title in the filling of job vacancies in this state. Guidelines defining consideration practices shall be developed at the state level. Agencies shall specify agency policies and practices to implement appropriate consideration of military veterans in filling agency job vacancies.

(h) The rules of statutory construction contained in Chapter 3 of Title 1, relating to general provisions concerning the construction of statutes, as now or hereafter amended, shall apply to this article. (Ga. L. 1972, p. 1015, § 2501; Ga. L. 1975, p. 79, §§ 1, 2; Ga. L. 1976, p. 1547, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 684, § 1; Ga. L. 2000, p. 1258, § 2; Ga. L. 2000, p. 1377, § 1; Ga. L. 2002, p. 415, § 45.)

The 2000 amendments. — The first 2000 amendment, effective July 1, 2000, in subsection (a), added “, except as provided in Code Section 15-11-9.1” at the end of the third sentence. The second 2000 amendment, effective July 1, 2000, in subsection (a), substituted “remove” for “eliminate” in the first sentence and added the last sentence; in subsection (b), in paragraph (3), substituted “merit,” for “merit and ” and added the language beginning “, job value”, and added the language beginning “and to provide” in paragraph (4); in subsection (c), deleted “unique” preceding “job” in paragraph (3), in paragraph (4), inserted “in order”, substituted “streamline state-wide recruiting for applicants, to provide for a state-wide applicant data base, to” for “receive application forms, provide information to applicants,” and substituted “applicant data” for “applications”, rewrote paragraphs (8) through (10), and deleted “seeking assistance in filling job vacancies” following “agencies” in paragraph (11); in subsection (d), in paragraph (1), substituted the present language preceding “agency” for “Define” and inserted “and apply”, deleted “all” following “allocate” in paragraph (2), and inserted “agency unique” in

paragraph (5); in subsection (e), inserted “the legislative or judicial branches, to the board of regents, or to” and substituted “employed” for “employs”; added subsection (f); redesignated former subsection (f) as present subsection (g) and added the last sentence; and redesignated the former subsection (g) as present subsection (h).

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, deleted the item (i) through (iv) designations in paragraph (c)(8).

Cross references. — Discrimination in public employment on basis of race, sex, age, etc., § 45-19-20 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “state-wide” was substituted for “statewide” in paragraph (c)(1).

Pursuant to Code Section 28-9-5, in 2000, “Code Section 15-11-24.3” was substituted for “Code Section 15-11-9.1” in the third sentence of subsection (a).

Law reviews. — For article advocating the inclusion of the Merit System Under the Georgia Administrative Procedure Act, see 1 Ga. St. B.J. 269 (1965).

JUDICIAL DECISIONS

Cited in Scott v. Undercofler, 108 Ga. App. 460, 133 S.E.2d 444 (1963); Horne v. Skelton, 152 Ga. App. 654, 263 S.E.2d 528 (1979); Bailey v. Wilkes, 162 Ga. App. 410,

291 S.E.2d 418 (1982); Clark & Stephenson v. State Personnel Bd., 252 Ga. 548, 314 S.E.2d 658 (1984); Tanner v. Freeman, 257 Ga. 146, 356 S.E.2d 201 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Filling classified position. — If a department of state government contracts for personal services with the right to control the time, manner and method of executing the work and the position does not come within one of the definitions of unclassified employees, then the position is classified and must be filled according to the rules and regulations of the State Merit System of Personnel Administration. 1974 Op. Att’y Gen. No. 74-27.

A county board has no authority to set or amend the terms and conditions of employment established by the Department of Hu-

man Resources and the State Merit System. 1973 Op. Att’y Gen. No. 73-56.

Correction of supervisor’s improper action. — If a department head or the State Personnel Board determines that the employee would have received a merit salary increase, but for the supervisor’s unauthorized consideration of the employee’s race, sex or other improper criteria, the reviewing authority may take the necessary action to correct the supervisor’s action including the awarding of back pay in the nature of granting the salary increase as of the date the employee would have received it but for the

unauthorized consideration of improper criteria. 1976 Op. Att'y Gen. No. 76-62.

Commissioner of personnel administration lacks authority to enter interstate agree-

ment to operate and fund test development center. 1980 Op. Att'y Gen. No. 80-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 1, 22 et seq. 45A Am. Jur. 2d, Job C.J.S. — 67 C.J.S., Officers, §§ 34, 54.

ALR. — Objective test is condition of competitive under civil service, 112 ALR 665.

Rights of state and municipal public employees in grievance proceedings, 46 ALR4th 912.

45-20-2. Definitions.

As used in this chapter, the term:

(1) "Appointing authority" means the person or groups of persons authorized by law or delegated authority to make appointments to fill positions.

(2) "Classified service" includes all employees of state departments as defined in this Code section; all employees of local departments of health and county departments of family and children services; local employees of the Department of Defense as defined by law; but those officers and employees excluded by this article shall not be included.

(3) "Commissioner of personnel administration" and "commissioner" mean the chief executive officer of the state merit system who is responsible for administering the state personnel program in accordance with applicable state and federal laws and the policies of the State Personnel Board.

(4) "Confidential position" means a position which by its nature is entrusted with private or restricted information of a type which would preclude it from inclusion in the classified service.

(5) "Covered employee" or "classified employee" means an employee subject to the rules and regulations of the state merit system.

(6) "Covered position" or "classified position" means a position subject to the rules and regulations of the state merit system.

(7) "Department" and "agency" are synonymous and mean all separate and distinct divisions and subdivisions of state government whose heads are legally authorized to appoint employees to positions; but these terms shall not include authorities and public corporations. "Department" and "agency" shall include an agency assigned to a department for administrative purposes and shall also include local departments of public health, county departments of family and children services, community service boards, and units of the Department of Defense with local employees.

(8) "Department covered by the state merit system" means that a department has one or more positions or employees subject to the State Merit System of Personnel Administration.

(8.1) "Interdepartmental transfer" means a transfer from a classified position in one department to a classified position in another department at the same or a higher or lower pay grade. A transfer between units of the Department of Human Resources, including county departments of health and county departments of family and children services, shall not be deemed to be an interdepartmental transfer.

(9) "Permanent employee," "permanent status employee," or "employee on permanent status" means an employee who has successfully completed a working test period in the class of positions in which he or she has been employed.

(10) "Position" means a set of duties and responsibilities assigned or delegated by competent authority for performance by one person.

(11) "Positions of purely policy-making nature" means those positions charged with the primary responsibility and authority for the promulgation, implementation, and enforcement of departmental policies.

(12) "Rules and regulations" and "merit system rules and regulations" mean the governing provisions of the state merit system, as adopted by the State Personnel Board and approved by the Governor which give force and effect to the policies of the State Personnel Board.

(13) "State Personnel Board" and "board" are synonymous and mean the body authorized by Article IV, Section III, Paragraph I of the Constitution of Georgia.

(14) "State Personnel Board policies" means those policies adopted by the board and approved by the Governor, which policies describe the goals and objectives of the state personnel program and serve as a basis for the formulation and administration of the merit system rules and regulations.

(15) "Unclassified service" includes the following officers and employees who are excluded from the classified service by this article:

(A) Members of the General Assembly;

(B) Persons elected or appointed by the General Assembly, employees of the General Assembly, officials and employees of the Department of Audits and Accounts, and the legislative counsel, except as otherwise provided;

(C) Officers, officials, and employees comprising the office of the Governor, except those officers, officials, and employees already covered by the state merit system by law or executive order; and all

employees of the Office of Planning and Budget in the position classification policy coordinator, notwithstanding their previous inclusion in the classified service;

(D) Officers, officials, and employees comprising the office of the Lieutenant Governor, except as otherwise provided;

(E) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;

(F) Members of boards and commissions appointed by the Governor or the General Assembly;

(G) The heads of departments or agencies appointed by boards or commissions which have been appointed by the Governor or the General Assembly, except where specifically included;

(H) Justices, judges, officials, officers, and employees of the judicial branch;

(I) Members, the chancellor, and vice-chancellors of the Board of Regents of the University System of Georgia and all officers, officials, and employees of the University System of Georgia, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;

(J) The officers, officials, and employees of the Department of Transportation, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;

(K) The officers, officials, and employees of the Department of Law, except those officers, officials, and employees already covered by the state merit system by law or executive order;

(L) A deputy or a confidential secretary when one is required by the head of a department, provided that the commissioner shall prescribe the conditions under which more than one deputy may be excluded;

(M) Not more than five positions designated by the head of each department, bureau, commission, or agency, including those assigned for administrative purposes only, provided that the agency does not presently contain five unclassified, full-time, permanent, managerial positions; and provided, further, that the rights of classified employees shall not be abridged;

(N) Members of the military forces of the state while engaged in military service;

(O) Members of unemployment compensation boards of review and appeals tribunals representing employer, employee, and the general public interest;

(P) State and local officials serving ex officio or emeritus and performing incidental duties;

(Q) Members of other advisory councils, committees, or similar bodies within the state merit system;

(R) Part-time or temporary employees rendering medical, nursing, or other professional, scientific, or technical services who are not engaged in the performance of administrative duties under the merit system, provided that such employees meet the minimum requirements of education and experience established by the appointing authority and such employment is approved by the commissioner;

(S) Prisoner, inmate, student, or patient help working in or about institutions;

(T) Per diem employees engaged in skilled or unskilled work on a seasonal or intermittent basis, provided that the commissioner has authorized such employment;

(U) Commission and contract salesmen and hourly or per diem skilled and unskilled laborers working at the Georgia Industries for the Blind;

(V) Positions specifically excluded from classified service by law or those of a purely policy-making or confidential nature as recommended by the department head and approved by the Governor after consultation with the commissioner;

(W) Time-limited positions established for the purpose of conducting a specific study, investigation, or project subject to the approval of the commissioner;

(X) Additional positions of unique functions as may be authorized by the commissioner;

(Y) Positions in the class Major assigned to the Uniform Division of the Department of Public Safety;

(Z)(i) The officers, officials, employees, and positions of the Department of Natural Resources, except those officers, officials, employees, and positions which are as of March 14, 1984, in fact in the classified service or which the commissioner designates as being in the classified service of the merit system unless placed in the unclassified service under another provision of this chapter. Except as provided in division (ii) of this subparagraph, unclassified employees of the Department of Natural Resources who are paid on an hourly basis shall continue not to be entitled to other benefits of employment, including, but not limited to, the accrual of annual and sick leave, membership within the Employees' Retirement System of

Georgia, and inclusion under the health insurance plan for state employees as provided for in Article 1 of Chapter 18 of this title.

(ii) Any provision of division (i) of this subparagraph to the contrary notwithstanding, unclassified employees of the Department of Natural Resources who are at work on or after July 1, 1993, who are paid on an hourly basis, and who are otherwise eligible to participate under Article 1 of Chapter 18 of this title may be included under the health insurance plan for state employees as funding is provided and may accrue annual and sick leave; provided, however, that such eligibility for annual and sick leave shall not apply to any service occurring prior to July 1, 1993;

(AA) The employees in the positions in the job classification of "Clerk, Contingency" in the Department of Labor who are paid on an hourly basis. These employees shall continue not to be entitled to other benefits of employment, including, but not limited to, the accrual of annual and sick leave, membership within the Employees' Retirement System of Georgia, and inclusion under the health insurance plan for state employees as provided for in Article 1 of Chapter 18 of this title;

(BB) The officers, officials, and employees of postsecondary technical schools which are operated by the Department of Technical and Adult Education, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;

(CC) The 39 positions funded by the General Assembly during the 1992 legislative session for the Insurance Department for the purposes of securing accreditation of the Insurance Department by the National Association of Insurance Commissioners;

(DD) The officers, officials, and employees of state schools which are operated by the State Board of Education, except those officers, officials, and employees already eligible to be covered by the state merit system by law or executive order;

(EE) All positions filled on or after July 1, 1996, by new hires or rehires, except as provided in Code Section 15-11-24.3;

(FF) Any position established on or after July 1, 1996; and

(GG) Any classified employee who, on or after July 1, 1996, accepts employment in an unclassified position.

(16) "Working test" or "working test period" means a probationary period of employment in a class of covered positions during which the employee must demonstrate to the satisfaction of the appointing authority that he or she has the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which

employed. The working test period shall apply to each promotion and interdepartmental transfer as provided in Code Section 45-20-17.

The commissioner may fix the length of the working test period for any class at not less than six months nor more than 18 months exclusive of any time in nonpay status or an unclassified position; provided, however, that the length of the working test period for troopers of the Uniform Division of the Department of Public Safety shall be 18 months. The State Personnel Board shall provide guidelines to be used by appointing authorities in reviewing classified employees during the working test period.

(17) "Working test employee" or "employee on working test" means a covered employee serving a working test period in the class of positions in which he or she is employed; provided, however, that an employee serving a working test period following a promotion in the same department from a lower class in which he or she held permanent status shall retain permanent status rights in the lower class until he or she attains permanent status in the class to which he or she has been promoted; provided, further, that an employee with five years or more of continuous state service who is serving a working test period following an interdepartmental transfer shall retain permanent status rights in the new department as provided in subsection (b) of Code Section 45-20-17. (Ga. L. 1972, p. 1015, § 2501; Ga. L. 1975, p. 79, § 2; Ga. L. 1976, p. 1547, § 1; Ga. L. 1982, p. 830, § 2; Ga. L. 1982, p. 1251, §§ 1, 2; Ga. L. 1983, p. 3, §§ 34, 61; Ga. L. 1983, p. 459, § 1; Ga. L. 1984, p. 22, § 45; Ga. L. 1984, p. 467, §§ 1, 2; Ga. L. 1985, p. 547, § 1; Ga. L. 1986, p. 469, §§ 1, 2; Ga. L. 1987, p. 575, § 4; Ga. L. 1988, p. 1252, § 5; Ga. L. 1990, p. 732, §§ 1-3; Ga. L. 1993, p. 510, § 1; Ga. L. 1993, p. 791, § 1; Ga. L. 1993, p. 1399, § 3; Ga. L. 1994, p. 97, § 45; Ga. L. 1994, p. 437, § 9; Ga. L. 1995, p. 345, § 1; Ga. L. 1995, p. 1069, § 3; Ga. L. 1996, p. 684, § 2; Ga. L. 2000, p. 1258, § 3; Ga. L. 2000, p. 1377, § 1.)

The 2000 amendments. — The first 2000 amendment, effective July 1, 2000, added " , except as provided in Code Section 15-11-9.1" at the end of subparagraph (15)(EE). The second 2000 amendment, effective July 1, 2000, inserted "or 'classified employee'" in paragraph (5); inserted "or 'classified position'" in paragraph (6); inserted "or she" in paragraph (9); deleted "and" from the end of subparagraph (15)(DD); substituted "or rehires," for a period at the end of subparagraph (15)(EE); and added subparagraphs (15)(FF) and (15)(GG); in paragraph (16), substituted

"promotion and interdepartmental transfer as provided in Code Section 45-20-17." for a colon in the second sentence and deleted former subparagraphs (16)(A) through (16)(D), which read: "(A) Appointment; (B) Reappointment; (C) Promotion; and (D) Interdepartmental transfer as provided in Code Section 45-20-17."; and inserted "or she" four times in paragraph (17).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "Code Section 15-11-24.3" was substituted for "Code Section 15-11-9.1" in subparagraph (15)(EE).

JUDICIAL DECISIONS

Ranking of employees. — The fact that Department of Natural Resources (DNR) pilots were ranked higher than pilots employed by the Georgia State Patrol did not violate rights of the latter since DNR employees are excluded from the merit system and the rank of state patrol employees must be compared with others in that system who are similarly situated for equal protection pur-

poses. *Ferros v. Georgia State Patrol*, 211 Ga. App. 50, 438 S.E.2d 163 (1993).

Cited in *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979); *State v. O'Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980); *Busbee v. Continental Ins. Co.*, 526 F. Supp. 1243 (N.D. Ga. 1981); *Clark & Stephenson v. State Personnel Bd.*, 252 Ga. 548, 314 S.E.2d 658 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Persons not covered. — The Historic Chattahoochee Commission does not fall within the coverage of the State Merit System. 1979 Op. Att'y Gen. No. 79-14.

The legislative intent of O.C.G.A. § 38-2-152 is that assistant adjutants general should not be covered under the State Merit System. 1971 Op. Att'y Gen. No. 71-71.

Personnel eligible for coverage. — Personnel hired by this state to perform services required under federally-funded contracts with State Department of Defense are state employees and are eligible for coverage under state employee's retirement. 1969 Op. Att'y Gen. No. 69-6.

Filling classified position. — If a department of state government contracts for personal services with a right to control the time, manner and method of executing the work and the position does not come within one of the definitions of unclassified employees, then the position is classified and must be filled according to the rules and regulations of the State Merit System of Personnel Administration. 1974 Op. Att'y Gen. No. 74-27.

The position of Deputy Commissioner of Banking and Finance is in the unclassified service of the State Merit System. 1975 Op. Att'y Gen. No. U75-57.

Positions not counted against discretionary selection of unclassified positions. — Since the General Assembly mandated that department heads and their deputies would be in the unclassified service, it would appear that it did not intend for these two positions to be included in discretionary provisions of O.C.G.A. § 45-20-2(15)(M), where the department head is given discretion in removing five positions from the classified service; therefore O.C.G.A.

§ 45-20-2(15)(M) gives the department head authority to remove up to five positions other than the department head position and the deputy from the classified service, provided that the department does not have five full-time managerial positions other than the department head and the deputy in the unclassified service. 1975 Op. Att'y Gen. No. 75-48.

The positions of assistant adjutant general for Army, assistant adjutant general for air and deputy director for civil defense, being specifically excluded by law from the classified service, are not counted against the five discretionary positions which the adjutant general may designate for inclusion in the unclassified service. 1975 Op. Att'y Gen. No. 75-81.

The two unclassified positions of executive director and secretary to the executive director in the Georgia Organized Crime Prevention Council need not be counted in computing the number of unclassified full-time permanent managerial positions in the State Crime Commission for purposes of O.C.G.A. § 45-20-2. 1975 Op. Att'y Gen. No. 75-106.

Positions in Georgia Public Service Commission which are unclassified as a matter of law. — Newly created Georgia Public Service Commission positions of director of utilities, public information officer, and director and assistant director, utility finance section are, as a matter of law, unclassified positions. 1981 Op. Att'y Gen. No. 81-39.

Accountant, statistician, expert, and clerical positions of utilities finance section may be placed in unclassified service if State Personnel Board concurs. 1981 Op. Att'y Gen. No. 81-39.

District health officer. — The position of District Health Officer can be placed in the

unclassified service of the State Merit System if there has been compliance with subparagraph (15)(V). 1985 Op. Att'y Gen. No. 85-1.

Employees of board of regents transferred to Georgia Public Telecommunications Commission remain unclassified employees but, where appropriate, may receive certain terms and conditions of employment afforded to employees in classified services of state merit system. 1982 Op. Att'y Gen. No. 82-9.

Natural resources employees. — Pursuant to O.C.G.A. § 45-20-2(15)(Z), all positions in the Department of Natural Resources created after March 14, 1984, and all employees who have been hired since March 14, 1984, are in the unclassified service of the State Merit System unless the Commissioner of Personnel Administration specifically designates the position and the employee as being in the classified service. 1987 Op. Att'y Gen. No. 87-35.

Housekeepers of DOD are state employees. — Housekeepers of Department of Defense are state employees. As state employees, housekeeping personnel are entitled to the benefits authorized under the State

Merit System and other laws upon compliance with the terms of participation. 1993 Op. Att'y Gen. No. 93-4.

Position's transfer between departments not interdepartmental transfer. — Under the Merit System Law, an interdepartmental transfer only applies to the situation where an employee is leaving a classified position in one department to accept a comparable classified position in another department; it does not include the situation where a position is transferred from one department to another and the incumbent remains with the position. 1986 Op. Att'y Gen. No. 86-38.

Agency's ability to unclassify positions not transferrable. — The ability to unclassify positions under O.C.G.A. § 45-20-2 cannot be sold, transferred or otherwise assigned by an appointing authority for use in another agency. 1986 Op. Att'y Gen. No. 86-36.

Positions included in discretionary designation of unclassified positions. — The limitation of five full-time permanent managerial positions in O.C.G.A. § 45-20-2(15)(M) would include any managerial positions unclassified under O.C.G.A. § 45-20-2(15)(V). 1986 Op. Att'y Gen. No. U86-31.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 19, 21.

C.J.S. — 67 C.J.S., Officers, § 34.

ALR. — Applicability of civil service rules as affected by attempt to enter into contract with one rather than appoint him to office or position, 111 ALR 1509.

Civil service laws, rules, or regulations as applicable to persons employed by one under contract with municipal corporation or other governmental body to do certain work for it or its residents, 134 ALR 1149.

Distinction between office and employment, 140 ALR 1076.

45-20-3. Duties and functions of State Personnel Board generally; compensation; quorum.

(a)(1) The State Personnel Board shall prescribe the guidelines by which the state's personnel policies shall be administered. The board shall hold regular meetings at least once each month and may hold additional meetings as may be required for the proper discharge of its duties.

(2) Members of the board shall receive no salary but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is attending meetings or performing official business for the board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance or official business.

(3) Three members shall constitute a quorum. Only the votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the State Personnel Board, provided there is a quorum.

(b) It shall be the specific duty and function of the State Personnel Board:

(1) To represent the public interest in the improvement of personnel administration in all state departments;

(2) To determine appropriate human resource management goals and objectives for the employees of the classified and unclassified service and prescribe policies for their accomplishment;

(3) At public hearings to adopt and amend policies, rules, and regulations effectuating the State Merit System of Personnel Administration and the state's personnel policies and practices with respect to employees of the classified and unclassified service subject to approval by the Governor. The rules and regulations of the State Personnel Board in effect on March 13, 1975, shall remain in effect until amended, changed, modified, or repealed by the board. Notice of State Personnel Board meetings shall be released to all departments and agencies and shall be prominently posted at the office of the State Merit System of Personnel Administration at least ten days prior to each board meeting;

(4) Where the board deems a review appropriate, for employees of the classified service, to ensure that a review is afforded on dismissals, other adverse personnel actions defined by the rules and regulations of the State Personnel Board, and other purported violations of the rules and regulations in the several departments which are included in the classified service as well as in other matters under the board's jurisdiction. All appeals determinations of the board shall be written and documented as to findings of fact, bases for decisions, and prescribed remedies;

(5) To assure the administration of state and federal laws relating to state personnel administration;

(6) To establish an annual budget covering all the costs of State Personnel Board operations, said budget to be incorporated as a component of the annual budget of the state merit system; and

(7) To promote public understanding of the purposes, policies, and practices of the State Merit System of Personnel Administration and to advise and assist the several state departments in fostering merit selection and securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards under the state's personnel system. (Ga. L. 1975, p. 79, § 4; Ga. L. 1976, p. 1547, § 2; Ga. L. 1979, p. 780, § 1; Ga. L. 1981, p. 1026, § 1; Ga. L. 1984, p. 427, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1997, p. 844, § 1; Ga. L. 2000, p. 1377, § 1.)

The 2000 amendment, effective July 1, 2000, in the first sentence of paragraph (1) of subsection (a), substituted "guidelines" for "general policies" and substituted "state's personnel policies" for "state merit system"; in subsection (b), substituted "all state departments" for "the state departments covered by the state merit system" in paragraph (1), in paragraph (2), inserted "human resource management" and substituted "employees of the classified and unclassified service" for "state merit system", in paragraph (3), inserted the language beginning with "and the" and ending with

"service" in the first sentence and deleted "covered by the state merit system" following "agencies" in the last sentence, in the first sentence of paragraph (4), inserted "for employees of the classified service," and substituted "classified" for "civil", and substituted "state's personnel" for "state merit" near the end of paragraph (7).

Cross references. — Creation, composition, etc., of State Personnel Board, Ga. Const. 1983, Art. IV, Sec. III, Para. I. Duty of State Personnel Board to formulate, establish, and maintain an employees' suggestion and awards program, § 45-21-2.

JUDICIAL DECISIONS

Appeal of ruling by State Retirement Board. — Plaintiff can appeal to the State Personnel Board from an adverse ruling of the State Retirement Board, on the grounds of discrimination. *Cantrell v. State*, 129 Ga. App. 465, 200 S.E.2d 163 (1973), *aff'd*, 231 Ga. 704, 203 S.E.2d 493 (1974).

Court of Appeals does not take judicial notice of the rules and regulations of the State Merit System. *Beall v. Department of Revenue*, 148 Ga. App. 5, 251 S.E.2d 4 (1978).

Reprisals by employees. — State Personnel Board should be given first opportunity

to pass on issue of reprisals against employees by fellow employees, that issue being within primary jurisdiction of board. *Bailey v. Wilkes*, 162 Ga. App. 410, 291 S.E.2d 418 (1982).

Cited in Department of Human Resources v. Sims, 137 Ga. App. 72, 222 S.E.2d 832 (1975); *Hays v. Skelton*, 145 Ga. App. 543, 244 S.E.2d 66 (1978); *Stanley v. Department of Human Resources*, 146 Ga. App. 450, 246 S.E.2d 459 (1978); *State v. O'Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980); *Majanovic v. Georgia Dep't of Human Resources*, 163 Ga. App. 450, 294 S.E.2d 669 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Position not to be covered. — To place the Deputy Director of Emergency Management Division of the Department of Defense under Merit System coverage where the deputy's tenure and compensation would be fixed by rules and regulations of the State Personnel Board would be in direct conflict with O.C.G.A. § 38-3-20, which provides that the deputy shall hold office at the pleasure of the Governor, who shall fix compensation. 1963-65 Op. Att'y Gen. p. 7.

Permissible salary supplements. — County salary supplement for local department of health and county department of family and children services employees who are in the classified service of the State Merit System of Personnel Administration are permissible if the supplements are in compliance with O.C.G.A. §§ 45-20-3(a) and 45-20-4(b)(3), as well as with a plan providing for similar treatment of employees in the

same class taking into account such factors as length of service, status and service rating. 1976 Op. Att'y Gen. No. 76-97.

Bonuses. — There is no provision in the Merit System Law, nor in its regulations, authorizing signing bonuses for new therapists employed by the Division of Rehabilitation Services of the Department of Human Resources. 1989 Op. Att'y Gen. No. 89-10.

Compensation of probation personnel under State Merit System. — No compensation can be paid to any probation supervisor or other probation personnel employed by the Department of Corrections and serving in the classified service of the State Merit System beyond that authorized in the compensation plan established by the State Personnel Board. 1989 Op. Att'y Gen. No. 89-39.

Concurrent jurisdiction with Office of Fair Employment Practices of unlawful discrimination charges. — The Georgia Office of

Fair Employment Practices and the State Personnel Board still have concurrent jurisdiction over charges of unlawful discrimination. 1983 Op. Att'y Gen. No. 83-51.

If a charging party files a charge of discrimination with either the Georgia Office of Fair Employment Practices or the State Personnel Board, the other agency may take jurisdiction over that charge while it is pending with the first agency. 1983 Op. Att'y Gen. No. 83-51.

Commissioner of personnel administration lacks authority to enter interstate agreement to operate and fund test development center. 1980 Op. Att'y Gen. No. 80-16.

Daily allowance while attending meetings. — Members of the State Personnel Board are authorized to receive their mileage ex-

pense and one daily allowance equal to the daily allowance received by members of the General Assembly for each day in which they perform duties or attend meetings for the State Personnel Board, including attendance at meetings for the Employee Benefit Plan Council, but they are not entitled to any additional compensation whatsoever. 1990 Op. Att'y Gen. No. 90-21.

Conflict of interest. — A member of the State Personnel Board is prohibited from representing a private client, for a fee, in a court of law or in any other adversarial proceeding where such representation might defeat the official public actions of another public officer. 1991 Op. Att'y Gen. 91-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, § 16.

C.J.S. — 67 C.J.S., Officers, §§ 24, 35, 54, 56, 58, 59, 62, 63, 66, 72. 81A C.J.S., States, §§ 136, 137.

ALR. — Power or discretion of civil service commission in respect of classifying or grading positions in civil service, 134 ALR 1103.

45-20-3.1. Rule-making procedure.

(a) At least 30 days prior to the date of a public hearing held to consider the adoption of rules or regulations to effectuate this chapter, the State Personnel Board shall transmit a notice containing an exact copy of the proposed rule or regulation to each member of the State and Local Governmental Operations Committee of the Senate and the Governmental Affairs Committee of the House of Representatives. The notice shall provide a citation to the authority pursuant to which the proposed rule or regulation is to be adopted and, if it amends an existing rule or regulation, such existing rule or regulation shall be clearly identified. The notice shall also state the date, time, and place of the public hearing at which adoption of the proposed rule shall be considered.

(b) If, prior to the date of the public hearing at which the proposed rule or regulation is to be considered for adoption, the chairman of either legislative committee specified in subsection (a) of this Code section notifies the commissioner of personnel administration and the State Personnel Board that the committee objects to the adoption of the proposed rule or regulation or has questions concerning the purpose, nature, or necessity of the proposed rule or regulation, it shall be the duty of the State Personnel Board to consult with the committee prior to the adoption of the proposed rule or regulation.

(c) If the State Personnel Board finds that the immediate adoption of a rule or regulation is necessary to secure or protect the interests of the State Merit System of Personnel Administration, such rule or regulation may be adopted on an emergency basis without following the procedures required by this Code section. In that event, the State Personnel Board shall adopt a resolution declaring the existence of an emergency and explaining the basis for such declaration as a condition necessary to adopt a rule or regulation on an emergency basis. Any rule or regulation adopted pursuant to the authority of this subsection shall expire in not more than 120 days immediately following its adoption, but the adoption of an identical rule pursuant to the requirements of this Code section shall not be precluded.

(d) By not later than August 1, 1985, the State Personnel Board shall file with the Secretary of State a certified copy of all rules or regulations which were adopted by said board prior to July 1, 1985, and which are of force and effect on July 1, 1985, or which were adopted prior to July 1, 1985, to become effective after that date. Any rule or regulation adopted by the State Personnel Board prior to July 1, 1985, which is not filed with the Secretary of State by August 1, 1985, shall be void and of no force and effect after August 1, 1985.

(e) Each rule or regulation adopted by the State Personnel Board on or after July 1, 1985, shall become effective upon approval by the Governor. The commissioner of personnel administration shall immediately file an original and two copies of the rule or regulation in the office of the Secretary of State.

(f) Rules or regulations filed with the Secretary of State pursuant to subsections (d) and (e) of this Code section shall contain a citation to the authority pursuant to which the rules or regulations are adopted and, when existing rules or regulations are amended, the filings required by said subsections (d) and (e) shall clearly identify the existing rules or regulations. The Secretary of State shall endorse on each filing required by subsections (d) and (e) of this Code section the time and date of the filing and shall maintain a file of the rules and regulations for public inspection.

(g) Rules and regulations filed with the Secretary of State pursuant to the requirements of subsections (d), (e), and (f) of this Code section shall be published by the Secretary of State as a part of the rules of state agencies published by the Secretary of State pursuant to Code Section 50-13-7.

(h) The courts shall take judicial notice of any rule which has become effective pursuant to this chapter. (Code 1981, § 45-20-3.1, enacted by Ga. L. 1985, p. 1250, § 1; Ga. L. 1987, p. 3, § 45; Ga. L. 1992, p. 6, § 45; Ga. L. 1995, p. 10, § 45.)

45-20-4. Creation of commissioner of personnel administration; appointment; compensation; powers and duties; appointment and prescription of duties of deputy commissioner and other assistants.

(a) There is created the position of commissioner of personnel administration. The commissioner shall be appointed by the Governor after consultation with the State Personnel Board subject to confirmation by the Senate. The Governor shall fix the compensation of the commissioner, who shall serve at the pleasure of the Governor.

(b) The duties and responsibilities of the commissioner shall be:

(1) To serve as executive secretary to the board, to attend meetings as directed by the board, and to provide such professional, technical, and other supportive assistance as may be required by the board in the performance of its duties;

(2) Consistent with board policy, to administer the operations of the state merit system and to otherwise act in the capacity of chief executive officer of the state personnel administration program;

(3) To submit to the Governor the rules and regulations adopted by the State Personnel Board effectuating the state merit system. Such rules and regulations when approved by the Governor shall have the force and effect of law and shall be binding upon the state departments covered by this article and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, and the establishment of registers of persons eligible for employment, the certification of eligible persons, appointments, promotions, transfers, demotions, separations, tenure, reinstatement, appeals, reports of performance, payroll certification, employee training, and all other phases of personnel administration. Such rules and regulations shall define and prohibit improper political activity by any departmental employee of the State Personnel Board or any employee covered under the terms of this article and shall provide that there shall be no discrimination for or against any person or employee in any manner, to include, but not be limited to, hiring, discharge, compensation, benefits, terms or conditions of employment, promotion, job classification, transfer, privileges, or demotion because of political affiliation, religious affiliation, race, creed, national origin, sex, age between 40 and 70 years, or physical disability. Such rules and regulations shall conform to the minimum standards for merit systems of personnel administration as specified by those federal departments from which federal funds are obtained for use by the several state departments covered by this article. Compensation plans and modifications thereto promulgated under the rules and regulations of the commissioner shall become effective as adopted upon approval of the director of the Office of Planning and Budget;

(4) To administer the rules and regulations and all other operational aspects of the state merit system and to assure compliance therewith in all departments;

(5) To appoint and prescribe the duties of the merit system staff;

(6) To establish an annual budget covering all the costs of operating the State Merit System of Personnel Administration including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the Governor may direct including the Intergovernmental Personnel Act of 1970, and to determine an equitable basis of prorating the annual costs among the several departments covered by the State Merit System of Personnel Administration, provided that upon approval of such budget by the Governor, the Governor shall be empowered to direct that the necessary pro rata share of the several assessed departments concerned be made available for expenditure by the state merit system in the same manner as appropriated funds are expended by other departments of the state;

(7) To ensure compliance with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration, and related matters;

(8) To cooperate with appointing authorities in the administration of this article in order to promote public service and establish conditions of service which will attract and retain employees of character and ability and to increase efficiency and economy in governmental departments by improving the methods of personnel administration with full recognition of the requirements and needs of management; and

(9) To appoint and prescribe the duties of a deputy commissioner of personnel administration who shall be the second highest executive officer in the state merit system and the deputy executive secretary to the State Personnel Board; and to appoint and prescribe the duties of such other assistant commissioners of personnel administration as the commissioner deems appropriate. The deputy commissioner and the assistant commissioners shall be in the unclassified service and any of them shall have the authority to perform any duty assigned to the commissioner if delegated to them by the commissioner. (Ga. L. 1975, p. 79, § 5; Ga. L. 1979, p. 780, §§ 2, 3; Ga. L. 1995, p. 1302, § 13; Ga. L. 2000, p. 1377, § 2.)

The 2000 amendment, effective July 1, 2000, in subsection (b), in paragraph (3), deleted "merit system" preceding "rules" in the beginning, substituted "employment" for "appointment under the merit system" near the middle, substituted "personnel administration" for "merit system administra-

tion" at the end of the second sentence, and substituted "this article" for "the state merit system" in the third sentence; substituted "departments;" for "the departments covered by the state merit system;" in paragraph (4); deleted " , all positions of which shall be included in the classified service, except as

otherwise provided in this article" following "staff" in paragraph (5); and, in paragraph (6), substituted "the Governor" for "he".

U.S. Code. — The Intergovernmental Personnel Act of 1970, referred in this section, is codified as 42 U.S.C. § 4701 et seq.

JUDICIAL DECISIONS

The State Personnel Board's broad authority to promulgate rules and regulations includes the power to promulgate a veterans' preference into a reduction-in-force regulation. *Brown v. State Merit Sys. of Personnel Admin.*, 245 Ga. 239, 264 S.E.2d 186 (1980).

Cited in *Brownlee v. Williams*, 233 Ga. 548, 212 S.E.2d 359 (1975); *Herault v. Department of Human Resources*, 137 Ga.

App. 446, 224 S.E.2d 480 (1976); *Beall v. Department of Revenue*, 148 Ga. App. 5, 251 S.E.2d 4 (1978); *State v. O'Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980); *State v. Head*, 163 Ga. App. 842, 296 S.E.2d 157 (1982); *Morgan v. Department of Offender Rehabilitation*, 166 Ga. App. 611, 305 S.E.2d 130 (1983); *Clark & Stephenson v. State Personnel Bd.*, 252 Ga. 548, 314 S.E.2d 658 (1984).

OPINIONS OF THE ATTORNEY GENERAL

State commissioner of personnel administration is empowered to enter into an agreement with the Equal Employment Opportunity Commission (EEOC) whereby members of the state commissioner's staff would investigate, in accordance with EEOC rules and regulations, unlawful employment practices filed against state agencies with the EEOC, provided such investigations pertain to the classified service of the State Merit System. 1976 Op. Att'y Gen. No. 76-47.

Correction of supervisor's wrongful conduct. — If a department head or the State Personnel Board determines that the employee would have received a merit salary increase, but for the supervisor's unauthorized consideration of the employee's race, sex or other improper criteria, the reviewing authority may take the necessary action to correct the supervisor's action including the awarding of back pay in the nature of granting the salary increase as of the date the employee would have received it but for the unauthorized consideration of improper criteria. 1976 Op. Att'y Gen. No. 76-62.

Permissible salary supplements. — County salary supplements for local department of health and county department of family and children services employees who are in the classified service of the State Merit System of Personnel Administration are permissible if the supplements are in compliance with O.C.G.A. §§ 45-20-3(a) and 45-20-4(b)(3), as well as with a plan providing for similar treatment of employees in the

same class taking into account such factors as length of service, status and service rating. 1976 Op. Att'y Gen. No. 76-97.

Bonuses. — There is no provision in the Merit System Law, nor in its regulations, authorizing signing bonuses for new therapists employed by the Division of Rehabilitation Services of the Department of Human Resources. 1989 Op. Att'y Gen. No. 89-10.

Compensation of probation personnel under State Merit System. — No compensation can be paid to any probation supervisor or other probation personnel employed by the Department of Corrections and serving in the classified service of the State Merit System beyond that authorized in the compensation plan established by the State Personnel Board. 1989 Op. Att'y Gen. No. 89-39.

Affirmative action responsibilities unaffected by "Fair Employment Practices Act". — The 1983 amendments to O.C.G.A. §§ 45-19-27 and 45-19-35 of the "Georgia Fair Employment Practices Act" do not infringe on the state personnel board or the personnel administration commissioner's responsibilities in the area of affirmative action plans. 1983 Op. Att'y Gen. No. 83-51.

Veterans' preference in reduction-in-force regulations. — State Personnel Board does not have authority to amend or otherwise alter veterans' preference currently in board's regulations on reductions-in-force. 1982 Op. Att'y Gen. No. 82-48.

Absolute veterans' preference in reductions-in-force in the classified service

of the state merit system can constitutionally be amended only by appropriate action of the General Assembly. 1982 Op. Att'y Gen. No. 82-48.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 4 et seq., 21 et seq., 73, 87.

C.J.S. — 67 C.J.S., Officers, §§ 24, 35, 54, 56, 58, 59, 62, 63, 66, 72. 81A C.J.S., States, §§ 104-119, 136, 137.

ALR. — Power or discretion of civil service commission in respect of classifying or

grading positions in civil service, 134 ALR 1103.

Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

45-20-5. Creation of Advisory Council for Personnel Administration; membership; objectives; powers.

(a) There is created an Advisory Council for Personnel Administration. The objectives of the council shall be:

- (1) To promote improvements in the personnel program in state government;
- (2) To provide a forum for the interchange of information relating to the state personnel program;
- (3) To serve as a channel through which the operating agencies may express their opinions on matters affecting state personnel;
- (4) To seek equitable interpretation and application of the laws, rules, regulations, policies, and procedures which affect state personnel management and administration; and
- (5) To strive for professional consensus consistent with the democratic process in all actions which it may undertake.

(b) Membership in the council shall be open to persons serving in technical, professional, supervisory, and executive capacities in personnel administration in all state departments subject to state merit system coverage.

(c) The council is authorized to adopt bylaws which prescribe its organizational structure, officers and terms and conditions of office, meeting schedules, and such other organizational and operational procedures as are necessary for its lawful and effective functioning. As the professional association authorized to represent the interests of the several departments in the area of state personnel administration, the council shall through its offices have direct access to the board, the commissioner, the Governor, and the General Assembly to present grievances, suggestions, and recommendations. (Ga. L. 1975, p. 79, § 10; Ga. L. 1976, p. 1486, § 2.)

45-20-6. Composition of classified and unclassified service; effect of exclusion from classified service on eligibility for membership in Employees' Retirement System of Georgia; working test period before obtaining merit system protection.

(a) The classified service as defined by Code Section 45-20-2 shall consist of all positions filled by agencies prior to July 1, 1996, except those included by law in the unclassified service and except as provided in Code Section 15-11-24.3. Such classified positions shall be covered by the state merit system. Any officer or employee who occupies a covered position under the state merit system prior to July 1, 1996, or as provided in Code Section 15-11-24.3 shall remain in the classified service so long as such officer or employee shall remain in a covered position or as otherwise provided by law.

(b) The unclassified service as defined by Code Section 45-20-2 shall consist of all positions in the departments of state government not included in the classified service under this article and these positions shall not be subject to the rules and regulations of the State Personnel Board.

(c) Exclusion from the classified service shall not exclude any employee, officer, or official from eligibility for membership or membership in the Employees' Retirement System of Georgia, provided that such employee, officer, or official is otherwise eligible for membership under Chapter 2 of Title 47.

(d) It is the intent of the General Assembly that employees in the classified service be required to serve a working test period before they obtain merit system protection and that the successful completion of this probationary period is part of the employment examination procedure. Each employee serving in a working test period shall be provided with management review by the appointing authority within ten calendar days of the date the employee has completed one-half of the working test period or as near to such date as is practicable. The management review shall include an evaluation of the employee's progress and recommendations, if any, for corrective action. The provision of management review pursuant to this subsection is solely for the purpose of promoting efficient management and employee development and shall not be interpreted as granting any additional rights to a working test employee. The State Personnel Board shall be responsible for adopting and amending rules and regulations establishing the guidelines to be used by the appointing authority in completing the management review pursuant to this subsection. (Ga. L. 1975, p. 79, § 6; Ga. L. 1976, p. 1547, § 6; Ga. L. 1989, p. 279, § 1; Ga. L. 1996, p. 684, § 3; Ga. L. 2000, p. 1258, § 4.)

The 2000 amendment, effective July 1, 2000, in subsection (a), added "and except as provided in Code Section 15-11-9.1" at the end of the first sentence and inserted "or as provided in Code Section 15-11-9.1" in the second sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “Code Section 15-11-24.3” was substituted for “Code Sec-

tion 15-11-9.1” in two places in subsection (a).

JUDICIAL DECISIONS

Employment reclassification with adverse racial impact not implemented. — The supremacy clause of the United States Constitution prohibited the state from implementing an employment reclassification proposal

which was flawed and likely to have an adverse racial impact. *Williams v. Ledbetter*, 685 F. Supp. 247 (M.D. Ga. 1988).

Cited in *State v. O’Neal*, 155 Ga. App. 870, 273 S.E.2d 631 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Employment retention rights. — Permanent, classified employees holding positions of a class which is one of a series of related classes in the competitive area of a reduction in force may, under certain conditions, have greater employment retention rights in a reduction in force than such employees holding positions of a class which is not one of a series of related classes. 1975 Op. Att’y Gen. No. 75-75.

Housekeepers of DOD are state employees. — Housekeepers of Department of Defense are state employees. As state employees, housekeeping personnel are entitled to the benefits authorized under the State

Merit System and other laws upon compliance with the terms of participation. 1993 Op. Att’y Gen. No. 93-4.

Compensation of employee, demoted upon return to classified service because former position no longer exists. — Employee who is returned to classified service pursuant to former subsection (d) of this section (deleted in 1996) and whose former position no longer exists in classified service resulting in demotion will be compensated on lower pay grade assigned to the employee’s new classification. 1981 Op. Att’y Gen. No. U81-35.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, § 19 et seq.

C.J.S. — 67 C.J.S., Officers, § 34.

ALR. — Applicability of civil service rules

as affected by attempt to enter into contract with one rather than appoint him to office or position, 111 ALR 1509.

45-20-7. Employees in legislative branch authorized to become covered employees; procedure.

Any other provision of this article to the contrary notwithstanding, an employee of the legislative branch of government may become a covered employee in the manner provided for in this Code section. As relates to employees in the office of the Lieutenant Governor and employees of the Senate, its officers, and its committees, the Lieutenant Governor shall act. As relates to employees in the office of the Speaker of the House of Representatives and employees of the House, its officers, and its committees, the Speaker of the House shall act. As relates to employees in the office of the Secretary of the Senate, the Secretary of the Senate shall act. As relates to employees in the office of the Clerk of the House of Representatives, the Clerk of the House shall act. As relates to employees in the Office of Legislative Counsel, the legislative counsel shall act. As relates to

employees in the Office of the Legislative Budget Analyst, the legislative budget analyst shall act. As relates to employees in the Office of Legislative Fiscal Officer, the legislative fiscal officer shall act. The above officers or officials shall notify the state merit system in writing of the positions or employees which are to become covered under this article and the effective date thereof. On that date, this article, as it relates to such covered employees, shall apply. (Ga. L. 1975, p. 79, § 3; Ga. L. 1990, p. 8, § 45.)

JUDICIAL DECISIONS

Cited in *State v. Cantrell*, 231 Ga. 704, 203 S.E.2d 493 (1974).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 79, 81.

45-20-8. Procedure for adverse action against permanent status employees generally; appeals generally.

(a) Permanent status employees may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board.

(b) This article is not intended to create a property interest in the job, but rather to create only a procedure under which permanent status employees can be dismissed or otherwise adversely affected. The procedure adopted for dismissing a permanent status employee from employment or otherwise adversely affecting his compensation or employment status shall include, as a minimum, that the appointing authority must provide the permanent status employee with reasons for the action and an opportunity to file an appeal and request a hearing which may be held before either the board or an administrative law judge; provided, however, that the hearing may be held subsequent to the effective date of the dismissal or other purported adverse action; provided, further, that the right to appeal shall not apply when persons are dismissed or otherwise adversely affected as to compensation due to curtailment of funds or reduction in staff when such action is in accordance with the rules and regulations of the State Personnel Board.

(c) No adverse action appealed to the State Personnel Board under the rules and regulations of the board, this article, or otherwise shall be considered invalid for failure to follow or comply with the rules and regulations of the board, this article, or any other requirement unless it is shown that the individual against whom the action has been taken has been substantially harmed by the procedural failure.

(d) The decision of the board on an appeal as to whether a dismissal or other adverse action was in accordance with the rules and regulations

prescribed by the State Personnel Board shall be binding upon the appointing authority. The board may modify the action of the appointing authority but may not increase the severity of such action on the employee. Such appointing authority shall promptly comply with such order as may be issued as a result of the appeal to the State Personnel Board. The decision of the board shall not limit the rights of the employee or the department to judicial review as to errors of law and such decision shall be stayed pending other further appeal.

(e) For purposes of this Code section and Code Section 45-20-9, administrative law judges appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50 are authorized to hold hearings and otherwise assist the State Personnel Board in the resolution of appeals. (Ga. L. 1975, p. 79, § 7; Ga. L. 1976, p. 1547, § 3; Ga. L. 1979, p. 780, § 4; Ga. L. 1982, p. 1245, §§ 1, 2; Ga. L. 1985, p. 149, § 45; Ga. L. 1997, p. 844, § 2.)

JUDICIAL DECISIONS

Property interest entitling employee to due process. — A public employee governed by the Georgia Merit Systems Act and the State Board Personnel Rules has a property interest in the employee's job entitling the employee to the protections of due process. *Brown v. Georgia Dep't of Revenue*, 881 F.2d 1018 (11th Cir. 1989).

Employees in the classified service may be terminated only after an evidentiary hearing on the grounds of their discharge, employees in the unclassified service have no such rights. *Ray v. Edwards*, 557 F. Supp. 664 (N.D. Ga. 1982), modified on other grounds, 725 F.2d 655 (11th Cir. 1984).

Jurisdiction over application to waive mandatory retirement. — A conservation ranger's right to apply for a waiver of mandatory retirement pursuant to O.C.G.A. § 47-2-224 imposed a duty on the board to consider the application and the board's refusal to consider it adversely affected the employee's "employment status" within the meaning of O.C.G.A. § 45-20-8; accordingly, the board had jurisdiction over the subject matter. *State Personnel Bd. v. Adams*, 216 Ga. App. 341, 453 S.E.2d 821 (1995).

Demotion must be pursuant to Act as existed at hiring. — The Merit System Act creates a constitutionally protected contract between the merit system member and the state; therefore, merit system employees can be demoted only in compliance with the Act

as it existed at the time they assumed their classified positions. *Clark & Stephenson v. State Personnel Bd.*, 252 Ga. 548, 314 S.E.2d 658 (1984).

Board authorized to modify action of appointing authority. — O.C.G.A. § 45-20-8(d) endows the board with authority to reduce a sanction imposed by the appointing authority even though the board finds sufficient evidence to support a charge for which the sanction of dismissal is authorized. *Dollar v. Department of Human Resources*, 196 Ga. App. 698, 396 S.E.2d 913 (1990).

Involuntary demotions do not conflict with the prohibition against involuntary servitude. *Brown v. State Merit Sys. of Personnel Admin.*, 245 Ga. 239, 264 S.E.2d 186 (1980).

Determination of whether retention points have been properly calculated does not require an evidentiary hearing. *Brown v. State Merit Sys. of Personnel Admin.*, 245 Ga. 239, 264 S.E.2d 186 (1980).

Employment reclassification with adverse racial impact not implemented. — White employee had no vested property rights in a promotion recommended by a 1984 reclassification proposal which was flawed and likely to have an adverse racial impact. *Williams v. Ledbetter*, 685 F. Supp. 247 (M.D. Ga. 1988).

Cited in *Herauld v. Department of Human Resources*, 137 Ga. App. 446, 224 S.E.2d 480 (1976); *Hall v. Department of Natural Re-*

sources, 139 Ga. App. 298, 228 S.E.2d 174 (1976); Stanley v. Department of Human Resources, 146 Ga. App. 450, 246 S.E.2d 459 (1978); Beall v. Department of Revenue, 148 Ga. App. 5, 251 S.E.2d 4 (1978); Department

of Human Resources v. Green, 160 Ga. App. 37, 285 S.E.2d 772 (1981); Bailey v. Wilkes, 162 Ga. App. 410, 291 S.E.2d 418 (1982); Georgia Dep't of Labor v. Sims, 164 Ga. App. 856, 298 S.E.2d 562 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Resignation of employee. — An employer has the discretion to accept or refuse a letter of resignation that is tendered prior to the effective date of a proposed dismissal. 1998 Op. Att'y Gen. No. 98-6.

Due process does not require specific procedure when employee resigns either by letter or abandonment. — Since employees in classified services of state merit system

have no property interest in continuing employment or ownership over any position, due process clause of fourteenth amendment does not require that any specific procedure be followed when such an employee resigns, whether pursuant to formal letter or resignation or by abandoning that position for more than five workdays. 1981 Op. Att'y Gen. No. 81-104.

45-20-9. Procedure for conduct of hearings and appeals relating to adverse personnel actions.

(a) Any laws to the contrary notwithstanding, all hearings on dismissals, other adverse personnel actions, and other purported violations of the rules and regulations in the several departments which are included in the career service shall be instituted by filing a written appeal with the Office of State Administrative Hearings upon such ground and in such form and under such procedure as may be prescribed by rules and regulations of the office. The party appealing and the department from whose action the appeal is taken shall be notified in writing within 15 days from the filing of the appeal that an appeal has been filed and the time for which a hearing is scheduled.

(b) The State Personnel Board, any member of the board, or an administrative law judge shall have the authority to do the following in connection with any hearing on a dismissal or other purported violation of the rules and regulations in the several departments which are included in the career service: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of the board's jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the board or the administrative law judge.

(c) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance

of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court. Once issued a subpoena may be quashed by the board or an administrative law judge if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant, that the testimony or documents sought are not material, that to respond to the subpoena would be unduly burdensome, or that for other good reasons basic fairness dictates that the subpoena should not be enforced.

(d) With respect to all hearings before the board or the administrative law judge:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts of Georgia shall be followed. Evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request and at the discretion of the administrative law judge or board, parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct such cross-examination as shall be required for a full and true disclosure of the facts;

(4) Official notice may be taken of judicially recognizable facts. In addition, official notice may be taken of technical facts within the board's specialized knowledge. Parties shall be notified either before or during the hearing by reference in preliminary reports or otherwise of the material officially noticed, including any staff memoranda or data; and they shall be afforded an opportunity to contest the material so noticed. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(e)(1) With respect to hearings at which the board did not preside at the presentation of the evidence, the administrative law judge who presided shall issue an initial decision within 30 days from the close of the evidence or if necessary within a longer period of time as ordered by the board or the administrative law judge. The initial decision shall be transmitted to the board, and copies shall be sent to the parties or their representatives. In the absence of an application for review from an adversely affected party to the board within 30 days from the date the initial decision was

issued or in the absence of an order by the board within such time for review on its own motion, the decision shall become the decision of the board without further proceedings or notice; and any right of additional appeals shall be extinguished.

(2) On review of the entire record from the administrative law judge, the board shall have all the powers it would have in presiding at the reception of the evidence, including the review of any motions granted or denied by the administrative law judge and including the review of any action taken by the administrative law judge. Both parties shall have the right to present oral arguments to the board. Any presentation to the board on the matter by an administrative law judge shall be made in the presence of the parties. No administrative law judge shall be present during the board's deliberations and voting on the application. At its discretion, the board may take additional testimony or remand the matter to the administrative law judge for such purpose.

(f) Unless precluded by law, informal disposition of any proceeding before the board or the administrative law judge may be made by stipulation, agreed settlement, consent order, or default.

(g) As a part of the initial decision or order subsequent to any hearing, the administrative law judge or the board shall include findings of fact and conclusions of law separately stated and the effective date of the decision or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Copies of the decision or order shall be mailed to all parties of record.

(h) Any party, including the state and any state board, bureau, commission, or department, who has exhausted all administrative remedies available before the board and who is aggrieved by a final decision or order of the board on any hearing may seek judicial review of the final decision or order of the board in the superior court of the county of the place of employment of the employee.

(i) Proceedings for review shall be instituted by filing a petition with the court within 30 days after the decision or order is rendered. Copies of the petition shall be served upon the board and all parties of record. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision of the board, and the grounds upon which the petitioner contends the decision or order should be reversed or remanded. The petition may be amended with leave of court.

(j) Within 30 days after the service of the petition or within further time allowed by the court, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. A party unreasonably refusing to stipulate to limit the record

may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(k) The filing of the petition shall stay the enforcement of the board's decision or order.

(l) If before the date set for hearing the appeal by the superior court application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the board, the court may order that the additional evidence be taken before the board upon conditions determined by the court. The board may modify its findings and decision or order by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions and orders with the reviewing court.

(m) The review shall be conducted by the court without a jury and shall be confined to the record. The court shall not substitute its judgment for that of the board as to the weight of the evidence on questions of fact. The court may affirm the decision or order of the board or remand the case for further proceedings. The court may reverse the decision or order of the board if substantial rights of the petitioner have been prejudiced because the board's findings, inferences, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the board;
- (3) Made upon unlawful procedure;
- (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (5) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(n) A party aggrieved by an order of the court in a proceeding authorized under this Code section may appeal to the Supreme Court of Georgia or the Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5. (Ga. L. 1976, p. 1547, § 4; Ga. L. 1979, p. 780, §§ 5-7; Ga. L. 1982, p. 3, § 45; Ga. L. 1990, p. 8, § 45; Ga. L. 1997, p. 844, § 3; Ga. L. 1998, p. 823, § 2.)

JUDICIAL DECISIONS

Denial of an evidentiary hearing on a state and arbitrary decision-making within the trooper's claims that the trooper was Department of Public Safety was an abdication of the State Personnel Board's discretion harmed due to personal favoritism, cronyism

tion and was contrary to law, arbitrary and capricious. *State Personnel Bd. v. Morton*, 198 Ga. App. 845, 403 S.E.2d 455 (1991).

Exclusive jurisdiction of board to hear appeals. — Only the board, and not the merit system commissioner, has the authority to review the decisions of a hearing officer. *Brown v. Ledbetter*, 569 F. Supp. 170 (N.D. Ga. 1983).

Jurisdiction over reprisals by employees. — State Personnel Board should be given first opportunity to pass on issue of reprisals against employees by fellow employees, that issue being within primary jurisdiction of board. *Bailey v. Wilkes*, 162 Ga. App. 410, 291 S.E.2d 418 (1982).

Judicial review of demotion of state employee. — Where plaintiff, who was demoted by employer, Georgia Retardation Center, a division of the Department of Human Resources (DHR), pursued administrative remedies, culminating in the denial of plaintiff's appeal by the State Personnel Board, and then petitioned the superior court for judicial review, it was held that plaintiff's employer is governed by the Georgia Administrative Procedure Act (APA), but the decision of which plaintiff seeks review is one made not by DHR but by the State Personnel Board, which is not governed by the APA, but by the provisions of O.C.G.A. § 45-20-1 et seq. *Duval v. Department of Human Resources*, 183 Ga. App. 726, 359 S.E.2d 756 (1987).

Judicial affirmation of administrative ruling res judicata in subsequent federal civil rights action. — A prior state court affirmation of a state administrative ruling is entitled to res judicata and collateral estoppel effect in a subsequent federal civil rights action brought pursuant to 42 U.S.C. § 1983, notwithstanding the fact that the state court's review was limited to a determination of whether there was "any evidence" in the record sufficient to support the factual findings of the administrative tribunal. *Gorin v. Osborne*, 756 F.2d 834 (11th Cir. 1985).

Board order denying jurisdiction deemed final decision. — The superior court had jurisdiction to hear and decide an appeal by a state employee from a determination of the board that it lacked jurisdiction over the person of the employee; the board's determination was final in that it denied the

employee an ability to obtain a hearing before the board and, thus, the court was authorized to render a final decision in the case and issue an order thereon. *State Personnel Bd. v. Adams*, 216 Ga. App. 341, 453 S.E.2d 821 (1995).

Order of the State Personnel Board denying state's motion to dismiss appeal was not a final decision in the case but was analogous to denial of a motion to dismiss a complaint and thus was not appealable to superior court. *Majanovic v. Georgia Dep't of Human Resources*, 163 Ga. App. 450, 294 S.E.2d 669 (1982).

Venue. — Subject-matter jurisdiction for judicial review of State Personnel Board decisions lies in the superior courts with venue in the county of the place of employment of the employee. *Duval v. Department of Human Resources*, 183 Ga. App. 726, 359 S.E.2d 756 (1987).

Notwithstanding plaintiff's having filed an action in the wrong county for venue purposes, the superior court errs in dismissing same. Rather, in light of defendant's motion to dismiss, the court should have transferred the case to the appropriate forum. *Duval v. Department of Human Resources*, 183 Ga. App. 726, 359 S.E.2d 756 (1987).

The "clearly erroneous" standard of O.C.G.A. § 45-20-9(m) is the same as the "any evidence rule." *Hall v. Ault*, 240 Ga. 585, 242 S.E.2d 101 (1978).

State Personnel Board's decision must be affirmed by superior court where supported by "any evidence." *Department of Human Resources v. Green*, 160 Ga. App. 37, 285 S.E.2d 772 (1981); *Department of Human Resources v. Turner*, 174 Ga. App. 483, 330 S.E.2d 418 (1985).

On appeal from a denial of an application for indemnification for the death of a prison guard by the Georgia State Indemnification Commission, even if the findings of fact urged upon the reviewing court by the appellant were supported by the evidence presented at trial, if the facts found by the special master were supported by some credible evidence, the reviewing court could not disturb those findings. *Georgia State Indemnification Comm'n v. Lyons*, 256 Ga. 311, 348 S.E.2d 642 (1986).

The language of O.C.G.A. § 45-20-9(m) has consistently been construed as confining the scope of review by the superior court to

the "any evidence" standard. *Department of Human Resources v. Horne*, 198 Ga. App. 341, 401 S.E.2d 556, cert. denied, 198 Ga. App. 897, 401 S.E.2d 556 (1991).

The trial court erred in reversing the dismissals of two correctional officers for use of excessive force against an inmate where the terminations were supported by some evidence, and there was no abuse of discretion in the board's failure to impose less severe punishment. *Department of Cors. v. Shaw*, 217 Ga. App. 33, 456 S.E.2d 628 (1995).

"Any evidence" standard does not raise constitutional question. — The fact that the Georgia legislature and courts have confined the scope of review in appeals from the State Personnel Board to an "any evidence" standard does not present a constitutional due process violation and, hence, the plaintiff was precluded as a matter of law from litigating a federal constitutional claim because of plaintiff's previous state suit involving the same cause of action. *Howkins v. Caldwell*, 587 F. Supp. 98 (N.D. Ga. 1983), aff'd, 749 F.2d 731 (11th Cir. 1984), cert. denied, 471 U.S. 1117, 105 S. Ct. 2361, 86 L. Ed. 2d 261 (1985).

Employee must first present to the personnel board claims that the department has failed to abide by a court's ruling reversing the board's upholding of an employee's dismissal, including issues of back pay and other benefits. There is no provision for de novo consideration of any issue by the superior court. *Department of Corrections v. Colbert*, 202 Ga. App. 27, 413 S.E.2d 498 (1991).

O.C.G.A. § 45-20-9(m) prevents a de novo determination of evidentiary questions leaving only a determination of whether the facts found by the board are supported by any evidence. *Hall v. Ault*, 240 Ga. 585, 242 S.E.2d 101 (1978); *Stanley v. Department of Human Resources*, 146 Ga. App. 450, 246 S.E.2d 459 (1978).

When reviewing a decision of the State Personnel Board, if there is any evidence to support the decision of the board, the decision should be affirmed. *Harris v. Department of Human Resources*, 149 Ga. App. 500, 254 S.E.2d 866 (1979).

The court must confine its review "to the record"; this clearly means the entire record. *Department of Natural Resources v.*

Wilmot, 151 Ga. App. 324, 259 S.E.2d 715 (1979).

Lack of authority to compel promotion. — Neither the State Board, the superior court, nor the appellate court has the authority to compel a promotion where the appointing authority has, within the bounds of its permissible discretions, declined to do so. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

Reversal for departure from board policy. — Trial court had the authority to reverse or remand decision of State Personnel Board on ground that the board abused its discretion by departing from its progressive discipline policy. *Georgia Dep't of Labor v. Sims*, 164 Ga. App. 856, 298 S.E.2d 562 (1982).

Rights of third parties. — O.C.G.A. § 45-20-9 did not authorize the superior court to reverse the state personnel board's decision regarding termination of a corrections officer based on the right of a third-party inmate to defend themselves in a disciplinary action. *Department of Cors. v. Derry*, 235 Ga. App. 622, 510 S.E.2d 832 (1998).

Cited in *Hays v. Skelton*, 145 Ga. App. 543, 244 S.E.2d 66 (1978); *Keramidas v. Department of Human Resources*, 147 Ga. App. 820, 250 S.E.2d 560 (1978); *Beall v. Department of Revenue*, 148 Ga. App. 5, 251 S.E.2d 4 (1978); *Moski v. Public Serv. Comm'n*, 148 Ga. App. 28, 251 S.E.2d 9 (1978); *Courts v. Economic Opportunity Auth. for Savannah—Chatham County Area, Inc.*, 451 F. Supp. 587 (S.D. Ga. 1978); *Dash v. Department of Human Resources*, 153 Ga. App. 633, 266 S.E.2d 305 (1980); *Fowler v. Aetna Cas. & Sur. Co.*, 159 Ga. App. 190, 283 S.E.2d 69 (1981); *Georgia Dep't of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981); *Bush v. State Bd. of Educ.*, 173 Ga. App. 710, 327 S.E.2d 826 (1985); *State Bd. of Pardons & Paroles v. Smith*, 179 Ga. App. 426, 346 S.E.2d 578 (1986); *Department of Transp. v. Nobles*, 187 Ga. App. 244, 370 S.E.2d 11 (1988); *Flournoy v. Akridge*, 189 Ga. App. 351, 375 S.E.2d 479 (1988); *Department of Cors. v. Mack*, 217 Ga. App. 862, 459 S.E.2d 573 (1995); *Department of Cors. v. Glisson*, 235 Ga. App. 51, 508 S.E.2d 714 (1998); *Georgia Mts. Community Serv. Bd. v. Carter*, 237 Ga. App. 84, 514 S.E.2d 86 (1999).

OPINIONS OF THE ATTORNEY GENERAL

Procedure unaffected by "Fair Employment Practices Act". — The statutory provisions of the "State Merit System Law", O.C.G.A. § 45-20-1 et seq., that bar discrimination in state employment, and provide a

procedure to adjudicate cases of unlawful employment discrimination have not been repealed by the "Georgia Fair Employment Practices Act", § 45-19-20 et seq. 1983 Op. Att'y Gen. No. 83-51.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 13, 41, 54, 64, 75, 87 et seq.

C.J.S. — 14 C.J.S., Certiorari, §§ 10, 16, 67 C.J.S., Officers, §§ 34, 35, 59, 62, 63, 66, 72, 81A C.J.S., States, §§ 100, 101.

ALR. — Validity, construction, and appli-

cation of probationary provisions of civil service statutes or regulations, 131 ALR 383.

Power of civil service body on own motion and without notice or hearing to reconsider, modify, vacate, or set aside order relating to dismissal of employee, 16 ALR2d 1126.

45-20-10. Submission and review of payrolls; submission and compilation of personnel data.

In order to furnish the Governor, the General Assembly, and the general public with statistical information which can be used in planning departmental programs and budgeting, each official required under present law to submit a quarterly budget to the Office of Planning and Budget shall submit to the commissioner such payroll and other essential personnel data as may be prescribed and approved by the Governor. The commissioner shall compile and consolidate reports pertaining to the number of personnel, salaries, length of service, type of work, distribution of employees by departments, and other pertinent personnel information. (Ga. L. 1975, p. 79, § 8; Ga. L. 1976, p. 1547, § 5; Ga. L. 1982, p. 3, § 45; Ga. L. 1998, p. 823, § 3.)

45-20-11. Audits of merit system; reports of audit findings.

The state auditor shall perform periodic operational audits of the state merit system. Such audits shall also be performed at the request of the Governor, the commissioner, or the General Assembly. Reports of audit findings shall be filed with the board, the commissioner, the Governor, and members of the General Assembly. (Ga. L. 1975, p. 79, § 9; Ga. L. 1985, p. 1120, § 1.)

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers, § 122, 81A C.J.S., States, § 134.

45-20-12. Implementation of public management certificate program.

(a) The State Personnel Board and the State Merit System of Personnel Administration are authorized and directed to implement a sequential series of management development courses in a certification program of study, preparation, and examination in order to recognize professional and educational attainment in the field of public management in Georgia state government.

(b) The certified public manager program is implemented by the State Personnel Board and the State Merit System of Personnel Administration with the following objectives:

(1) To encourage the recognition of management in state government as a profession established upon an underlying body of knowledge and to delineate a course of study and preparation by which such knowledge can be acquired;

(2) To foster and maintain higher educational and ethical standards in the field and practice of public management;

(3) To assist agencies of state government by establishing a more objective measure of a manager's professional preparation and knowledge; and

(4) To provide appropriate professional recognition of management development attainment by managers in Georgia state government. (Ga. L. 1976, p. 338.)

45-20-13. Penalties for violations of article or rules or regulations promulgated thereunder generally; effect of misdemeanor conviction.

(a) Any person who knowingly and willfully violates this article or the rules and regulations promulgated under this article shall be guilty of a misdemeanor.

(b) Any person convicted of a misdemeanor under this article shall in addition to any punishment prescribed therefor be ineligible for appointment to or employment in a position in the state service for a period of five years after such conviction. (Ga. L. 1975, p. 79, § 12; Ga. L. 1990, p. 8, § 45.)

OPINIONS OF THE ATTORNEY GENERAL

Basis for disqualification from future employment. — Under Section 3.400 of the Rules and Regulations of the State Personnel Board and O.C.G.A. § 45-20-13, persons are disqualified from future employment with

the state for a period of five years only upon conviction of a misdemeanor for having violated the state merit system law. 1986 Op. Att'y Gen. No. 86-24.

45-20-14. Rights of merit system officers and employees continued.

Unless otherwise provided in this article, each merit system officer or employee in a classified position affected by this article shall be entitled to all rights which he possessed as a merit system officer or employee in a classified position before March 13, 1975, including all rights of rank or grade, rights to vacation, sick pay and leave, payment for accumulated annual leave, rights under any retirement or personnel plan, and any other rights under any law or administrative policy. This Code section is not intended to create any new rights for any merit system officer or employee but to continue only those rights in effect before March 13, 1975. (Ga. L. 1975, p. 79, § 11.)

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Civil Service, §§ 1, 22. **C.J.S.** — 67 C.J.S., Officers, § 34.

45-20-15. Confidentiality of information received by staff in counseling; exceptions.

(a) As used in this Code section, the term:

(1) “Counseling session” means any discussions or meetings between a state employee or other employee covered by the state merit system and an official or other employee of the state merit system, which discussions or meetings are conducted under an official program established by the commissioner.

(2) “Information” means any written document or material acquired or produced as a part of a counseling session or the contents thereof and the contents of any discussions held as a part of a counseling session.

(3) “Program” means the employee relations counseling function established by the commissioner under which a covered employee is entitled to confidential counseling with regard to job related problems.

(b) Except as provided in subsections (c), (d), and (e) of this Code section, information received or developed by the merit system staff in performing its counseling functions shall be maintained as confidential by the merit system and shall not be subject to disclosure by the merit system unless such information relates directly to proof of the possible violation of a criminal statute.

(c) Information may be disclosed if such disclosure is authorized, in writing, by all parties to the counseling session in which the information was produced.

(d)(1) Nothing contained in this Code section shall be construed to prohibit any person from disclosing any fact the knowledge of which was obtained independently of a counseling session.

(2) The state merit system counselor may disclose information obtained in a counseling session to a manager of the state merit system for the purpose of employee counseling. Any such disclosure shall be confidential and the person to whom the information is disclosed shall be subject to the restrictions contained in subsection (b) of this Code section.

(e) Information received by a state merit system counselor during a counseling session, which information indicates that unlawful activity is being conducted in the employee's agency, may be disclosed to the commissioner. The commissioner may then notify the commissioner of any agency involved, the Governor, or the Attorney General for appropriate action.

(f) Any hearing before the board or one of its hearing officers regarding the dismissal of a state employee covered by the merit system must be held in the county in which the employee is employed unless all parties agree to another location. (Code 1981, § 45-20-15, enacted by Ga. L. 1984, p. 583, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 1990, p. 8, § 45.)

45-20-16. Rules for accrual of leave, holidays, and compensation for closing of state offices; utilization of accumulated sick leave; conversion to and use of personal leave; disapproval of sick leave; procedure for contesting disapproval.

(a) As a part of employee compensation, the State Personnel Board shall establish rules for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees in the classified service. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees in the unclassified service in the same manner and amount provided for employees in the classified service.

(b) Any employee in the classified service who has accumulated sick leave shall be authorized to utilize such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board; provided, however, that whenever an employee is sick and absent from work, the employee may be required to report each day by telephone to the appropriate authority. An employee shall not be required to provide documentation for the use of less than 17 hours of sick leave in any 30 day period, unless the employee has demonstrated excessive or abusive use of sick leave. The State Personnel Board shall establish rules and regulations that define excessive or abusive use.

(c) An employee who has accrued more than 15 days of sick leave as of November 30 of any year may, by written notification to the appointing

authority by no later than December 31 of that year, convert up to three days of accrued sick leave in excess of 15 days to personal leave. Any personal leave not used by December 31 of the following year, or upon termination, shall be forfeited and not restored to the employee.

(d) Personal leave may be used by the employee for personal reasons the same as annual leave upon approval by the employee's appointing authority. The employee shall normally be required to provide the appointing authority with a 24 hour advance notice for use of personal leave. Every reasonable effort shall be made by the appointing authority to accommodate employees on their requests for use of personal leave.

(e) If the appointing authority disagrees with the claim of sickness or need to utilize sick leave made by the employee pursuant to subsection (d) of this Code section, the appointing authority may disapprove the use of such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board. The employee may contest the disapproval of the sick leave through the department's employee complaint procedure.

(f) The State Personnel Board shall adopt regulations to implement the provisions of this Code section. The leave regulations of the board in effect on July 1, 1991, and not in conflict with this Code section shall remain in effect until amended, changed, modified, or repealed by the board. (Code 1981, § 45-20-16, enacted by Ga. L. 1989, p. 1582, § 1; Ga. L. 1990, p. 1341, § 1; Ga. L. 1993, p. 721, § 1; Ga. L. 2000, p. 1377, § 3.)

The 2000 amendment, effective July 1, 2000, rewrote subsection (a).

45-20-17. Interdepartmental transfers.

(a) Prior to the interdepartmental transfer of any employee with less than five years of continuous state service, the department to which the employee is transferring may require the employee to execute a written statement acknowledging that a new working test period is required in the new department and that the employee retains no rights to any former class or employment in either department. If the department to which the employee is transferring fails to require the employee to execute the statement, the employee shall be considered a permanent status employee in the new class in the department to which the employee transferred.

(b) An employee with five years or more of continuous state service who accepts an interdepartmental transfer shall be required to serve a working test period in the class in the new department; provided, however, if the employee previously held permanent status in a class on a pay grade lower than the class to which the employee transferred in the new department, the employee shall retain permanent status rights to the lower class in the new department.

(c) Notwithstanding any other provision of this Code section, a transfer between units of the Department of Human Resources, including county departments of health and county departments of family and children services, shall not be deemed to be an interdepartmental transfer subject to the provisions of this Code section. (Code 1981, § 45-20-17, enacted by Ga. L. 1990, p. 732, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this Code section, originally designated as Code Section 45-20-16, was redesignated as Code Section 45-20-17.

45-20-18. Loss of eligibility for wage incentive payment due to abuse of member of public.

Any state employee who commits a validated act of abuse towards a member of the public while performing employment duties shall not be eligible for any wage incentive payment during the period such act occurred. (Code 1981, § 45-20-18, enacted by Ga. L. 1995, p. 1081, § 1A.)

45-20-19. Termination or elimination of classified positions or employees.

(a) This subsection shall apply whenever any department or agency proposes to eliminate one or more classified positions or terminate the employment of one or more classified employees through a reduction in force under State Personnel Board rules. No position elimination or employment termination subject to this subsection may become effective until at least 30 days after the affected employee has been notified in writing by the department or agency. Such notice must contain at a minimum:

(1) A statement of the nature of the proposed action to be taken with respect to the affected employee;

(2) An explanation of the rights of the affected employee with respect to the proposed reduction in force, including any right of appeal, or other opportunities with respect to possible continued employment, any opportunities to apply for employment with any public or private party assuming the functions of the employee, or any other similar opportunities; and

(3) An explanation of the affected employee's rights and options with respect to his or her employment benefits, including but not limited to any right to continued participation in any retirement system or insurance plan.

(b) This subsection shall apply whenever any department or agency proposes to eliminate 25 or more classified positions or terminate 25 or more classified employees through a reduction in force under State Personnel Board rules. At least 15 days prior to giving the employee notice required by subsection (a) of this Code section, the department or agency

shall give written notice to the President of the Senate and the Speaker of the House of the proposed reduction in force. Such notice shall:

(1) Identify the facilities and operations to be affected and the estimated number of employees to be affected; and

(2) State the reasons for the proposed action.

(c) Subsections (a) and (b) of this Code section shall not apply to a reduction in force which must become effective immediately because the department or agency has insufficient funds available to pay the salaries of the affected employees. (Code 1981, § 45-20-19, enacted by Ga. L. 1997, p. 853, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “State Personnel Board” was substituted for “state personnel board” in the first sentence of subsections (a) and (b).

45-20-20. Eligible employees must register with Selective Service System; exemptions.

(a) As used in this Code section, the term:

(1) “Employing unit” means that budget unit under the Appropriations Act through which an officer or employee receives compensation for services rendered as such officer or employee.

(2) “Federal law” means Section 3(a) of the Military Selective Service Act (50 App. U.S.C.A. 451, et seq.).

(b) A state officer, other than an elected officer whose office is created by the Constitution, shall not be eligible to take office if such person is a male between 18 and 26 years of age unless, prior to taking the oath of office, such person presents proof to the Secretary of State of having registered with the Selective Service System as required by federal law or of being exempt from such registration.

(c) A person employed by the state before July 1, 1998, other than an officer specified or exempted by subsection (b) of this Code section, who is a male between 18 and 26 years of age shall be terminated for cause unless, by January 1, 1999, such person presents proof to the employing unit of state government of having registered with the Selective Service System as required by federal law or of being exempt from such registration.

(d) A person may not be hired as an employee of the state on or after July 1, 1998, other than an officer specified or exempted by subsection (b) of this Code section, if that person is a male between 18 and 26 years of age unless, prior to such hiring, such person presents proof to the employing unit of state government of having registered with the Selective Service System as required by federal law or of being exempt from such registration. (Code 1981, § 45-20-20, enacted by Ga. L. 1998, p. 1031, § 1.)

45-20-21. Performance management system provided for classified employees.

The State Personnel Board shall provide for a performance management system for the periodic review and rating of the quality and quantity of work performed by classified employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia and of any agency which employed no classified employees as of July 1, 1996, shall provide for the review and rating of the quality and quantity of work performed by employees in the unclassified service in the same manner as employees in the classified service. (Code 1981, § 45-20-21, enacted by Ga. L. 2000, p. 1377, § 4.)

Effective date. — This Code section became effective July 1, 2000.

ARTICLE 2**LEAVES OF ABSENCE****45-20-30. Leave of absence for blood donation.**

Each state, county, and municipal officer and employee in this state shall be allowed a leave of absence, without loss of pay, of not more than eight hours in each calendar year for the purpose of donating blood. This absence shall be computed at two hours per donation, up to four times per year. However, any such officer or employee who donates blood platelets or granulocytes through the plasmapheresis process shall be allowed a leave of absence, without loss of pay, of not more than 16 hours in each calendar year which shall be computed at four hours per donation, up to four times per year. (Ga. L. 1976, p. 165, § 1; Ga. L. 1982, p. 845, §§ 1, 2; Ga. L. 1983, p. 3, § 34.)

45-20-31. Leave of absence for organ or bone marrow donation.

(a) Each employee of the State of Georgia or of any branch, department, board, bureau, or commission of the State of Georgia who serves as an organ donor for the purpose of transplantation shall receive a leave of absence, with pay, of 30 days and such leave shall not be charged against or deducted from any annual or sick leave and shall be included as service in computing any retirement or pension benefits. The employee shall not be entitled to such leave of absence with pay unless he or she furnishes to his or her supervisor or other proper authority a statement from a medical practitioner who is to perform such transplantation procedure or from a hospital administrator that the employee is making an organ donation as provided in this Code section. If such donation does not occur, the provisions of this Code section shall not be applicable. For the purposes of

this Code section, the term “organ” means a human organ, including an eye, that is capable of being transferred from the body of a person to the body of another person.

(b) Each employee of the State of Georgia or of any branch, department, board, bureau, or commission of the State of Georgia who serves as a bone marrow donor for the purpose of transplantation shall receive a leave of absence, with pay, of seven days and such leave shall not be charged against or deducted from any annual or sick leave and shall be included as service in computing any retirement or pension benefits. The employee shall not be entitled to such leave of absence with pay unless he or she furnishes to his or her supervisor or other proper authority a statement from a medical practitioner who is to perform such transplantation procedure or from a hospital administrator that the employee is serving as a bone marrow donor as provided in this Code section. If such donation does not occur, the provisions of this Code section shall not be applicable. (Code 1981, § 45-20-31, enacted by Ga. L. 1984, p. 907, § 1; Ga. L. 1985, p. 149, § 45; Ga. L. 2002, p. 473, § 1.)

The 2002 amendment, effective July 1, 2002, designated the existing provisions as subsection (a); in subsection (a), substituted “serves as an organ donor” for “donates one of such employee’s kidneys” in the first

sentence, in the second sentence, inserted “or she”, inserted “or her” and substituted “an organ” for “a kidney”, and added the last sentence; and added subsection (b).

ARTICLE 3

VOLUNTARY DEDUCTIONS FROM WAGES OR SALARIES OF STATE EMPLOYEES FOR BENEFIT OF CHARITABLE ORGANIZATIONS

OPINIONS OF THE ATTORNEY GENERAL

Conformity with O.C.G.A. §§ 45-20-50 through 45-20-56 required. — No state agency may make any deductions from its employees’ salaries for charitable purposes without specific legislative authority, and any agency making such deductions must ensure that its operation is in total conformity with this article; otherwise, the deductions are illegal. 1982 Op. Att’y Gen. No. 82-79.

Employment benefit provided by

O.C.G.A. §§ 45-20-50 through 45-20-56 not a gratuity. — Since charitable deductions are authorized by O.C.G.A. §§ 45-20-50 through 45-20-56 to provide employees of various state agencies with an additional employment benefit, such benefit becomes part of the employment contract and consequently is not a gratuity to the employees. 1982 Op. Att’y Gen. No. 82-79.

45-20-50. Purpose of article.

It is the purpose of this article to permit voluntary deductions from wages or salaries of employees of the State of Georgia for the benefit of eligible charitable health and human care organizations and to provide for the distribution of funds collected through a process which involves minimal disruption of work time and provides reasonable assurance to the employ-

ees that their contributions are well used. (Ga. L. 1982, p. 2274, § 1; Code 1981, § 45-20-50, enacted by Ga. L. 1982, p. 2274, § 9.)

45-20-51. Definitions.

As used in this article, the term:

(1) "Agency" means any agency, as defined in Code Section 45-20-2, which has full-time paid state employees and, in addition thereto, shall include the board of regents, all units of the university system, public authorities, and public corporations.

(2) "Charitable organization" means any voluntary health, welfare, educational, or environmental restoration or conservation agency that is:

(A) A private, self-governing, nonprofit organization chartered or authorized to do business in the State of Georgia by the office of the Secretary of State;

(B) Exempt from taxation under Code Section 48-7-25;

(C) One to which contributions are authorized as deductible by Section 170 of the United States Internal Revenue Code, as amended;

(D) Qualified as an organization as defined in Section 501(c)(3) of the United States Internal Revenue Code; and

(E) Not a religious organization except that a religious organization is not disqualified to the extent that it operates a health, welfare, educational, or environmental restoration or conservation function on a nonsectarian basis with a distinct and separate budget for this function.

(3) "Eligible voluntary charitable organization" means a charitable organization which:

(A) Actively conducts health, welfare, educational, or environmental restoration or conservation programs and provides services to individuals directed at one or more of the following common human needs within a community: family and child care services; protective services for children and adults; services for children and adults in foster care; services related to the management and maintenance of the home; day-care services for adults; transportation services; information, referral, and counseling services; the preparation and delivery of meals; adoption services; emergency shelter, care, and relief services; safety services; neighborhood and community organization services; recreation services; social adjustment and rehabilitation services; health support services; or a combination of such services designed to meet the special needs of specific groups such as children and youth, the aged, the ill and infirm, or the physically disabled; or provides

services concerned with the ecological impact of altering the environment; or provides services concerned with the cultivation or imparting of knowledge or skills;

(B) Provides direct and substantial services on a state-wide basis; is one of the federated charitable organizations that coordinates fund raising and allocations for at least five local charitable organizations in the various geographic areas in which employees are solicited; is a federation of at least five state-wide and local charitable organizations which are otherwise qualified under this article and which federation expends all funds collected under this article to serve Georgia residents and programs; or is a health, welfare, educational, or environmental restoration or conservation agency which is a member of a federated, nonsectarian, nonpolitical, eligible voluntary charitable organization subject to such rules and regulations as the board may prescribe;

(C) Observes a policy and practice of nondiscrimination on the basis of race, color, religion, sex, national origin, or disability, which policy is applicable to persons served by the agency, to agency staff employment, and to membership on the agency's governing board; and

(D) Does not expend a substantial portion of its efforts to influence the outcome of elections or the determination of public policy.

No charitable organization shall be approved by the State Personnel Board under more than one provision of subparagraph (B) of this paragraph.

(4) "Employee" means any person receiving a payroll check from the state for personal service to an agency. (Ga. L. 1982, p. 2274, § 2; Code 1981, § 45-20-51, enacted by Ga. L. 1982, p. 2274, § 9; Ga. L. 1983, p. 3, § 34; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 878, § 1; Ga. L. 1990, p. 8, § 45; Ga. L. 1994, p. 567, § 1; Ga. L. 1995, p. 1302, § 14; Ga. L. 1996, p. 769, § 1.)

Editor's notes. — Ga. L. 1987, p. 191, § 10, provided that that Act applies to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, provided that tax, penalty, and interest liabilities and re-

fund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

45-20-52. State Personnel Board as policy-setting body for administration of article; rules and regulations for implementation of article.

The State Personnel Board shall serve as the policy-setting body for administration of this article and shall have full power to promulgate, adopt, amend, or revoke such rules and regulations consistent with this article as may be necessary to implement this article. The board shall have specific authority to establish procedures under which charitable organizations may be evaluated for inclusion in the charitable deductions program. Only eligible voluntary charitable organizations which are approved by the board may participate in the program. Such procedures may include minimum participation levels based upon number of employees making a designated contribution, dollar amounts of designated contributions, or other factors as decided by the board and may exclude otherwise eligible charitable organizations for failure to attain a minimum participation level. (Ga. L. 1982, p. 2274, § 3; Code 1981, § 45-20-52, enacted by Ga. L. 1982, p. 2274, § 9.)

Code Commission notes. — Pursuant to article” was substituted for “herewith” in Code Section 28-9-5, in 1986, “with this the first sentence.

45-20-53. Deduction from salaries or wages for contribution to charitable organizations.

(a) Any agency is authorized to deduct from the salaries or wages of its employees amounts designated by the employee for the purpose of contribution to charitable organizations. No such deduction procedure shall be implemented without the approval of the chief executive officer or governing board of the agency.

(b) No deduction shall be made without the written request of the employee, which request shall designate the amount which is to be deducted. Deductions shall be made monthly or to coincide with each pay period as determined by the agency. No deduction shall be made for less than \$1.00 per deduction period or for less than \$1.00 per designated charitable organization. Employees shall be clearly apprised, on solicitation materials, of the manner in which funds will be distributed. All deduction authorizations shall remain continuously in effect until changed or canceled in writing by the employee. No deduction shall be made for the benefit of any organization which fails to secure approval of the board. (Ga. L. 1982, p. 2274, § 4; Code 1981, § 45-20-53, enacted by Ga. L. 1982, p. 2274, § 9.)

45-20-54. Disclosure of amounts or designations of authorized charitable deductions; pressure, coercion, or intimidation of employee with reference to deductions.

(a) No person shall disclose to any other person names of contributors or the amounts or designations of authorized charitable deductions of another, except as is necessary to accomplish the purpose of this article or as otherwise authorized in writing by the person whose contributions are sought to be disclosed. This prohibition against disclosure shall not, however, bar appropriate state or federal tax authorities from access necessary to establish the tax status of charitable organizations receiving these funds.

(b) No person shall pressure, coerce, or in any way intimidate any employee to have charitable deductions made from the employee's salary or with reference to the amount of deductions to be made. Each agency shall review any violations or alleged violations of this subsection and assure that appropriate action is taken. Such action may include, without being limited to, discharge from employment, consistent with policies of the agency and with rules and regulations of the board. (Ga. L. 1982, p. 2274, § 5; Code 1981, § 45-20-54, enacted by Ga. L. 1982, p. 2274, § 9.)

Editor's notes. — Ga. L. 1982, p. 2274, § 9, enacted two Code Sections 45-20-54. The second record was redesignated unofficially as Code Section 45-20-54.1. Ga. L. 1983, p. 3, § 34, officially redesignated Code Section 45-20-54 as Code Section 45-20-54.1.

45-20-54.1. Promulgation of regulations regarding distribution of deducted funds; disposition of undesignated funds.

The board shall promulgate regulations necessary and expedient to accomplishing the distribution of funds deducted from employees' salaries, honoring employee designations. Undesignated funds shall be fairly and impartially distributed as determined by the board. (Ga. L. 1982, p. 2274, § 6; Code 1981, § 45-20-54, enacted by Ga. L. 1982, p. 2274, § 9; Code 1981, § 45-20-54.1, as redesignated by Ga. L. 1983, p. 3, § 34; Ga. L. 1984, p. 22, § 45.)

Editor's notes. — Ga. L. 1982, p. 2274, § 9, enacted two Code Sections 45-20-54. The second record was redesignated unofficially as Code Section 45-20-54.1. Ga. L. 1983, p. 3, § 34, officially redesignated Code Section 45-20-54 as Code Section 45-20-54.1.

45-20-55. Reimbursement of cost of making deductions and remitting proceeds; delegation of activities related to management of funds.

The state shall be reimbursed by participating charitable organizations, in direct proportion to their receipts, for its additional direct cost of making deductions and remitting the proceeds. To minimize time and administrative expense, activities related to the management of the funds such as preparation of materials, solicitor training, fiscal agent duties, and similar activities may be delegated by the board to a participating party. (Ga. L. 1982, p. 2274, § 7; Code 1981, § 45-20-55, enacted by Ga. L. 1982, p. 2274, § 9.)

45-20-56. Deduction and transmittal of funds as privilege; immunity from liability to employee or charitable organization for errors, omissions, or decisions regarding deductions; board as sole judge of eligibility of charitable organizations.

Deductions from salaries of employees and transmittal of funds to charitable organizations may be offered as a privilege for the convenience of employees and no right of action shall accrue to the employee or to any charitable organization for errors, omissions, or decisions of administrative employees or officials regarding such deductions. The board is the sole judge of charitable organizations approved for participation in the program. Charitable organizations may be disapproved without any liability on the part of any state official or employee. (Ga. L. 1982, p. 2274, § 8; Code 1981, § 45-20-56, enacted by Ga. L. 1982, p. 2274, § 9.)

ARTICLE 4

EMPLOYEE ASSISTANCE PROGRAM

45-20-70. “Employee assistance program” defined.

As used in this article, the term “employee assistance program” or “program” means a service established to assist state employees in coping with and overcoming persistent problems that jeopardize the employee’s effective job performance. (Code 1981, § 45-20-70, enacted by Ga. L. 1987, p. 990, § 1; Ga. L. 1988, p. 13, § 45.)

45-20-70.1. Program authorized.

The State Personnel Board is authorized in its discretion to establish an employee assistance program for all state employees and to adopt and promulgate rules and regulations for its administration. (Code 1981, § 45-20-70.1, enacted by Ga. L. 1988, p. 13, § 45; Ga. L. 2000, p. 1377, § 5.)

The 2000 amendment, effective July 1, 2000, substituted “all state employees” for “employees of departments covered under the state merit system”.

45-20-71. Confidentiality of program related records or activities.

Program related records or activities which might disclose the nature of the services provided an employee or the identity of an employee utilizing the program shall be maintained on a confidential basis. Such records shall be produced only when the commissioner of personnel administration or his or her designee is satisfied it is needed to respond to a life-threatening or medical emergency or when written release is given by an employee. (Code 1981, § 45-20-71, enacted by Ga. L. 1987, p. 990, § 1; Ga. L. 2000, p. 1377, § 5.)

The 2000 amendment, effective July 1, 2000, inserted “or her” in the last sentence.

ARTICLE 5

RANDOM DRUG TESTING OF EMPLOYEES IN HIGH-RISK JOBS

Law reviews. — For note on 1990 enactment of this article, see 7 Ga. St. U.L. Rev. 383 (1990).

45-20-90. Definitions.

As used in this article, the term:

(1) “Employee” means any employee required to be certified under the provisions of Chapter 8 of Title 35 receiving a salary or hourly wage from any state agency, department, commission, bureau, board, or authority and shall include all such certified employees whether or not such certified employees are covered by the rules and regulations of the State Personnel Board. “Employee” shall also include any certified employee working under a personnel contract to provide personnel services, including but not limited to medical, security, or transportation services to a state or other public agency.

(2) “Established drug test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations 53 Fed. Reg. 11979, et seq., as amended) or other professionally valid procedures approved by the commissioner of human resources.

(3) “High-risk work” means those duties where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public.

(4) "Illegal drug" means marijuana as defined in paragraph (16) of Code Section 16-13-21, as amended; a controlled substance as defined in paragraph (4) of Code Section 16-13-21, as amended; a dangerous drug as defined in Code Section 16-13-71, as amended; or any other controlled substance or dangerous drug that persons are prohibited from using. The term "illegal drug" shall not include any drug when used pursuant to a valid medical prescription or when used as otherwise authorized by state or federal law. (Code 1981, § 45-20-90, enacted by Ga. L. 1990, p. 2028, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Campus policemen and other security personnel of University System institutions vested with the power to make arrests under O.C.G.A. § 20-3-72 are subject to the mandatory training requirements of the Georgia

Peace Officer Standards and Training Act (O.C.G.A. § 35-8-1 et seq.) and are consequently covered by the random drug testing provisions of O.C.G.A. § 45-20-90 et seq. 1990 Op. Att'y Gen. No. 90-11.

RESEARCH REFERENCES

ALR. — Supreme Court's views on mandatory testing for drugs or alcohol, 145 ALR Fed. 335.

45-20-91. Determination of employees subject to testing.

(a) Employees working in high-risk jobs shall be subject to random testing for evidence of use of illegal drugs.

(b) The head of each state agency, department, commission, board, bureau, or authority shall determine those positions and groups of positions whose occupants regularly perform high-risk work where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public. This Code section shall not be construed to include employees who do not regularly perform high-risk work regardless of the fact that other employees in the same classification do perform such high-risk work. With regard to positions covered under the classified service of the State Merit System of Personnel Administration, the department head shall consult with the commissioner of personnel administration before making such determination and shall notify the commissioner of any such determination. (Code 1981, § 45-20-91, enacted by Ga. L. 1990, p. 2028, § 1.)

45-20-92. Rules adopted by State Personnel Board; policies adopted by department or agency heads; certification of testing laboratories.

(a) For employees in the classified service of the State Merit System of Personnel Administration, the State Personnel Board shall adopt rules to establish:

(1) The portion of employees in the high-risk work group that may be selected at random for testing at each testing period;

(2) Methods for assuring that employees are selected for testing on a random basis;

(3) Methods for assuring that privacy intrusions are minimized during collection of body fluid specimens;

(4) Methods for assuring that any body fluid specimens are stored and transported to testing laboratories at proper temperatures and under such conditions that the quality of the specimens shall not be jeopardized;

(5) Methods for assuring that the identity of employees whose tests show the usage of an illegal drug is limited to the staff who are entitled to this information; and

(6) The identification of those persons entitled to the information

and shall adopt such other rules as it may deem appropriate to carry out the purposes of this article. The board may, in its discretion, delegate to the commissioner of personnel administration such authority as appropriate to carry out the purposes of this article.

(b) For all other employees, the department or agency head shall adopt policies to establish:

(1) The portion of employees in the high-risk work group that may be selected at random for testing at each testing period;

(2) Methods for assuring that employees are selected for testing on a random basis;

(3) Methods for assuring that privacy intrusions are minimized during collection of body fluid specimens;

(4) Methods for assuring that any body fluid specimens are stored and transported to testing laboratories at proper temperatures and under such conditions that the quality of the specimens shall not be jeopardized;

(5) Methods for assuring that the identity of employees whose tests show the usage of an illegal drug is limited to the staff who are entitled to this information; and

(6) The identification of those persons entitled to the information

and shall adopt such other policies as such department or agency head may deem appropriate to carry out the purposes of this article.

(c) The commissioner shall establish and maintain a list of those laboratories qualified to conduct established drug tests and shall determine

which illegal drugs will be the subject of testing; provided, however, that no laboratory shall be so certified unless that laboratory, on a daily basis, adds to its urine testing program a minimum of 10 percent blind test specimens. (Code 1981, § 45-20-92, enacted by Ga. L. 1990, p. 2028, § 1.)

45-20-93. Grounds for termination from employment.

(a) Any employee conducting high-risk work found to have used an illegal drug shall be terminated from his or her employment.

(b) Any employee who refuses to provide body fluid, when requested to do so in accordance with the random drug testing conducted pursuant to this article and administrative rules and regulations promulgated under this article, shall be terminated from his or her employment. (Code 1981, § 45-20-93, enacted by Ga. L. 1990, p. 2028, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Disqualification from employment after resignations. — There is nothing in O.C.G.A. § 45-20-93 nor in the associated State Personnel Board rules that prohibits the employee from resigning, so long as employment is terminated. However, even if

the employee resigns rather than be fired, the employee must still be disqualified from future employment for at least two years under the State Personnel Board rules. 1992 Op. Att'y Gen. No. 92-25.

ARTICLE 6

DRUG TESTING FOR STATE EMPLOYMENT

Code Commission notes. — Pursuant to § 28-9-5, in 1990, Article 5 of Chapter 20 of Title 45, as enacted by Ga. L. 1990, p. 2046, § 1, was renumbered as Article 6 of Chapter 20 of Title 45, as Ga. L. 1990, p. 2028, § 1 already enacted an Article 5 of Chapter 20 of Title 45.

Editor's notes. — Ga. L. 1995, p. 667, §§ 1 and 3, effective July 1, 1995 and applicable with respect to certain persons entering state employment on or after July 1, 1995, repealed the Code sections formerly codified

at this article and enacted the current article. The former article consisted of Code Sections 45-20-110 through 45-20-112 and was based on Code 1981, §§ 45-20-110 through 45-20-112, enacted by Ga. L. 1990, p. 2046, § 1.

Ga. L. 1995, p. 667, § 2, not codified by the General Assembly, provides the statement of legislative findings regarding the necessity for drug testing of applicants for state employment.

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Editor's notes. — Many of the opinions noted below were rendered under this article prior to its 1995 repeal and reenactment by Ga. L. 1995, p. 667, §§ 1 and 3.

Scope. — Public agencies covered by O.C.G.A. §§ 45-20-110 and 45-20-111 must require all applicants including, but not

limited to, interns, seasonal, temporary and contingency employees, and substitutes, who are hired into positions on or after July 1, 1990, to submit to an established drug test administered pursuant to rules and regulations promulgated by the State Personnel Board, to determine if the employees have

used one of the drugs included in the “Federal Five” prohibited drug groups. 1990 Op. Att’y Gen. No. 90-14.

O.C.G.A. §§ 45-20-110 and 45-20-111 and the State Personnel Board’s rules and regulations on the administration and verification of the established drug test are applicable to candidates for positions in agencies not covered under the State Merit System, like state authorities, local and independent school systems that receive state funds, and the University System. 1990 Op. Att’y Gen. No. 90-14.

O.C.G.A. §§ 45-20-110 and 45-20-111 applies to applicants for local government emergency management positions which are

in the classified service of the State Merit System. 1990 Op. Att’y Gen. No. 90-18.

The General Assembly intended all public employees, including court employees, to be covered by O.C.G.A. §§ 45-20-110 and 45-20-111; thus, applicants for employment by the Court of Appeals should be required to submit to drug testing. 1990 Op. Att’y Gen. No. U90-12.

Confidentiality. — Test results obtained pursuant to O.C.G.A. §§ 45-20-110 and 45-20-111 may not be shared outside the realm of covered public employers and are not subject to public disclosure. 1990 Op. Att’y Gen. No. 90-14.

45-20-110. Definitions.

As used in this article, the term:

(1) “Applicant” means a candidate who is offered public employment with any agency, department, commission, bureau, board, college, university, institution, or authority of any branch of state government or who has commenced employment but has not submitted to an established test for illegal drugs.

(2) “Established test” means the collection and testing of bodily fluids administered in a manner equivalent to that required by the Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Regulations 53 Fed. Reg. 11979, et seq., as amended).

(3) “Illegal drug” means marijuana/cannabinoids (THC), cocaine, amphetamines/methamphetamines, opiates, or phencyclidine (PCP). The term “illegal drug” shall not include any drug when used pursuant to a valid prescription or when used as otherwise authorized by state or federal law.

(4) “Job” means a defined set of key responsibilities and performance standards encompassing one or more positions sufficiently similar in responsibilities and performance standards to be grouped together.

(5) “Medical review officer” means a properly licensed physician who reviews and interprets results of drug testings and evaluates those results together with medical history or any other relevant biomedical information to confirm positive and negative results.

(6) “Position” means a set of duties and responsibilities assigned or delegated by competent authority for performance by one person. (Code 1981, § 45-20-110, enacted by Ga. L. 1995, p. 667, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, commas were deleted following “Regulations” and “53” in paragraph (2).

Law reviews. — For note on 1995 amendments of this section and § 45-20-111, see 12 Ga. St. U.L. Rev. 328 (1995).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. §§ 45-20-90 through 45-20-111 is plainly unconstitutional because it violates applicants’ rights to privacy under the Fourth and Fourteenth Amendments of the United States Constitu-

tion. *Georgia Ass’n of Educators v. Harris*, 749 F. Supp. 1110 (N.D. Ga. 1990) (decided prior to 1995 repeal and reenactment of this article by Ga. L. 1995, p. 667, §§ 1 and 3).

RESEARCH REFERENCES

ALR. — Supreme Court’s views on mandatory testing for drugs or alcohol, 145 ALR Fed. 335.

45-20-111. Analysis of positions warranting established test; testing requirements, cost, and procedure; disqualification from employment for refusing test or showing positive results.

(a) The head of each agency, department, commission, bureau, board, college, university, institution, or authority shall ensure an analysis is completed on all jobs in his or her organization to determine those positions whose duties and responsibilities warrant conducting an established test for illegal drugs in accordance with the provisions of this Code section. The analysis must be completed by July 1, 1995. All jobs established after this date must undergo a similar analysis no later than six weeks after establishment. An applicant for a designated position shall undergo a drug test consistent with these provisions. Organizations with positions covered under the classified service of the state merit system shall consult with the commissioner of personnel administration before making final determinations and shall provide the commissioner with a list of designated positions and accompanying documentation and analysis.

(b) An applicant for state employment who is offered employment in a position designated by the head of the agency, department, commission, bureau, board, college, university, institution, or authority as requiring a drug test shall, prior to commencing employment or within ten days after commencing employment, submit to an established test for illegal drugs. All costs of such testing shall be paid from public funds by the employing agency or unit of state government. Any such test which indicates the presence of illegal drugs shall be followed by a confirmatory test using gas chromatography/mass spectrometry analysis. If the results of the confirmatory test indicate the presence of illegal drugs, such results shall be reviewed and interpreted by a medical review officer to determine if there is an alternative medical explanation. If the applicant provides appropriate

documentation and the medical review officer determines that it was a legitimate usage of the substance, the result shall be reported as negative. Any applicant who fails to provide an alternative medical explanation shall be reported by the medical review officer as having a positive test result. Any applicant offered employment who refuses to submit to an established test for illegal drugs or whose test results are positive shall be disqualified from employment by the state. Such disqualification shall not be removed for a period of two years from the date that such test was administered or offered, whichever is later. The State Personnel Board shall develop rules for the administration of the test and any verification procedures for positions covered under the state merit system. Other covered units of state government shall also develop rules governing these procedures. The results of such tests shall remain confidential and shall not be a public record unless necessary for the administration of these provisions or otherwise mandated by other state or federal law. (Code 1981, § 45-20-111, enacted by Ga. L. 1995, p. 667, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “July 1, 1995” was substituted for “the effective date of this article” in subsection (a).

CHAPTER 21

EMPLOYEES' SUGGESTION AND AWARDS PROGRAM

Sec.		Sec.	
45-21-1.	Definitions.		tions or ideas by commissioner;
45-21-2.	Establishment of employees' suggestion and awards program; implementation.		report of findings and recommendations; board to make final determination.
45-21-3.	Preparation of rules.	45-21-7.	Awards to employees.
45-21-4.	Employment of staff.	45-21-8.	Costs to be borne by board and appointing authorities.
45-21-5.	Creation of agency committees; agency committees to review suggestions and report to commissioner.	45-21-9.	Incentive payments not to be included in calculation of retirement benefits.
45-21-6.	Further investigation of sugges-		

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O.C.G.A. Ch. 21, T. 45 provides authority for plan. — O.C.G.A. Ch. 21, T. 45 provides authority for the State Personnel Board to develop and implement a suggestion plan for Merit System employees which could

include monetary payment to classified employees for suggestions which result in substantial monetary services to the state. 1971 Op. Att'y Gen. No. 71-183.

RESEARCH REFERENCES

ALR. — Rights and obligations under employer-employee suggestion plans, 40 ALR3d 1416.

45-21-1. Definitions.

As used in this chapter, the term:

(1) "Agency" means any agency as defined in Code Section 45-20-2, any authority, or any public corporation, but shall not include the board of regents and units of the University System of Georgia.

(2) "Appointing authority" means a person or group of persons authorized by law or delegated authority to make appointments to fill employee positions in the legislative, judicial, or executive branch of state government.

(3) "Board" means the State Personnel Board.

(4) "Commissioner" means the commissioner of personnel administration or his or her designee.

(5) "Incentive award program" means a program developed by the board or other appointing authority under subsection (b) of Code Section 45-21-2.

(6) "Incentive compensation plan" means a plan developed by the board under Chapter 20 of this title and subsection (c) of Code Section 45-21-2 or other appointing authority under subsection (c) of Code Section 45-21-2.

(7) "Incentive payment" means a one-time lump sum payment that does not become a part of base salary. (Ga. L. 1957, p. 336, § 1; Ga. L. 1959, p. 23, § 1; Ga. L. 1973, p. 794, § 1; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, added paragraph (1), redesignated former paragraphs (1) through (3) as present paragraphs (2) through (4), respectively, deleted "for employees within the classified service, as defined in Code Section 45-20-2" following "chapter" in paragraph (3), and inserted "or her" in paragraph (4).

The 2001 amendment, effective April 26, 2001, added paragraph (2), redesignated former paragraph (2) as present paragraph (3), deleted former paragraph (3), which read: "'Employees' suggestion and awards program' means the program developed by the board under this chapter:", and added paragraphs (5) through (7).

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Georgia Correctional Industries Administration employees ineligible to participate in

program. — See 1987 Op. Att'y Gen. No. 87-6.

45-21-2. Establishment of employees' suggestion and awards program; implementation.

(a) The board may formulate, establish, and maintain employees' incentive award programs and incentive compensation plans to encourage state employees to improve the operation and perception of state government and its instrumentalities.

(b) The board may establish incentive award programs for agencies for:

(1) Employees who perform a special, extraordinary service, act, or achievement in the public interest, beyond the ordinary demands of duty, and in connection with or related to state government or its instrumentalities. Without limitation but as illustrations, when these criteria are satisfied such awards may be made for:

(A) Heroism;

(B) Response to an unanticipated problem or opportunity for the state employer;

(C) Service or an act or achievement which particularly enhances public perception of state government; or

(D) Innovative or unique success where other efforts have failed or where experts said a job could not be done; and

(2) Employees whose suggestions or ideas are implemented by a state department or instrumentality.

Appointing authorities of the legislative and judicial branches may also establish such incentive award programs.

(c)(1) In providing for compensation, pay for performance, and performance management under Chapter 20 of this title, the board may provide for incentive compensation plans which authorize or direct incentive pay as follows:

(A) A one-time payment to induce the employment of a prospective employee with particularly desirable skills or attributes;

(B) A one-time payment for learning new, critically needed employment skills;

(C) A lump sum payment for employees who surpass performance expectations; and

(D) Goal based or incentive pay based on objectively measurable criteria.

(2) The board may impose requirements for periods of continued employment for incentive compensation plans. To receive consideration for incentive compensation for surpassing expectations under subparagraph (C) of paragraph (1) of this subsection, an employee must be in continued employment with the appointing authority or an appointing authority in the legislative, executive, or judicial branch at the time the compensation is paid.

(3) Appointing authorities for which the board does not provide for compensation, pay for performance, and performance management under Chapter 20 of this title may also establish such incentive compensation plans. This authorization shall extend without limitation to the appointing authorities of the legislative and judicial branches, state authorities, and any executive branch agency which employed no classified employees as of July 1, 1996. (Ga. L. 1957, p. 336, § 4; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1; Ga. L. 2002, p. 415, § 45.)

The 2001 amendment, effective April 26, 2001, designated the existing provisions of this Code section as subsection (a); in subsection (a), substituted the existing language for the former language, which read: "The board shall formulate, establish, and maintain an employees' suggestion and awards program to encourage state employees to make meritorious suggestions which will promote efficiency and economy in the performance of any function of state government and assist in recruiting and retaining

qualified career employees in an increasingly competitive economy."; and added subsections (b) and (c).

The 2002 amendment, effective April 18, 2002, part of an Act to revise, modernize, and correct the Code, substituted "subparagraph (C) of paragraph (1) of this subsection" for "subparagraph (c)(1)(C) of this Code section" in paragraph (c)(2).

Editor's notes. — Ga. L. 2000, p. 1377, § 6, effective July 1, 2000, reenacted this Code section without change.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 52 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 49 et seq.

45-21-3. Preparation of rules.

(a) With the approval of the board, the commissioner shall prepare rules necessary and appropriate for the proper administration of incentive award programs, including rules governing the:

- (1) Operation of the incentive awards programs;
- (2) Eligibility of employees to participate in the programs;
- (3) Type of suggestions or extraordinary service;
- (4) Method of submission of nominations or applications;
- (5) Procedure for review;
- (6) Procedure for verifying qualification; and
- (7) Procedure for determining awards.

(b) The rules for incentive awards for extraordinary service under paragraph (1) of subsection (b) of Code Section 45-21-2 shall provide for evaluation and award by the appointing authority. The rules for incentive awards for suggestions and ideas shall comply with Code Sections 45-21-4 through 45-21-8.

(c) The commissioner shall submit the rules or any amendments thereto to the Governor. Such rules or amendments will become effective when approved by the Governor or 15 days after they are submitted, if the Governor has not rejected them prior to that time. (Ga. L. 1957, p. 336, § 5; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, in subsection (a), deleted “and regulations” following “rules” twice in the introductory language, substituted “Type” for “Character and quality” in paragraph (3), and deleted “, determining character,” preceding “and making” in paragraph (6); and substituted “submitted, if the Governor” for “submitted to him if he” in the second sentence of subsection (b).

The 2001 amendment, effective April 26, 2001, in subsection (a), substituted “incentive award programs” for “this program and for the accomplishment of the purposes of this chapter” in the introductory language, substituted “incentive awards programs” for “employees’ suggestion and awards pro-

gram” at the end of paragraph (1), in paragraph (2), deleted “state” preceding “employees” and substituted “programs” for “program” at the end, substituted “or extraordinary service” for “that will receive consideration” at the end of paragraph (3), substituted “nominations or applications” for “suggestions” at the end of paragraph (4), deleted “of suggestions” at the end of paragraph (5), substituted “qualification” for “service and making service awards” at the end of paragraph (6) and deleted “to be given for suggestions” at the end of paragraph (7); added subsection (b); and redesignated former subsection (b) as present subsection (c).

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Rules as to suggestion and awards program. — State Personnel Board is authorized to promulgate rules and regulations for administration of State Employees' Suggestion and Awards Program; provided, however, that such rules and regulations do not

conflict with the requirement of § O.C.G.A. 45-21-7 that number of years of state service for state service award is ascertained by director of Employees' Retirement System of Georgia. 1982 Op. Att'y Gen. No. 82-92.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 153 et seq., § 230 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 87-114.

45-21-4. Employment of staff.

Subject to Article 1 of Chapter 20 of this title, the commissioner shall employ the necessary staff required to carry out this chapter. (Ga. L. 1957, p. 336, § 9; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, substituted "staff" for "clerical assistants" and substituted "to carry" for "by him and by the board in carrying".

Editor's notes. — Ga. L. 2001, p. 500, § 1, effective April 26, 2001, reenacted this Code section without change.

45-21-5. Creation of agency committees; agency committees to review suggestions and report to commissioner.

Under incentive award programs for suggestions and ideas, each agency head shall appoint a committee to be composed of not more than three members selected from the officers and employees of the agency to review suggestions submitted which pertain to the operations of that agency. The agency committee shall, within 45 days of receipt, report to the commissioner on all suggestions submitted to it pursuant to this chapter. Such report shall contain an estimate of the value of projected annual savings to be generated by a suggestion and a statement concerning the appointing authority's plan with reference to adopting them. (Ga. L. 1957, p. 336, § 6; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, substituted "that" for "his" in the first sentence, substituted ", within 45 days of receipt," for "without undue delay" in the second sentence, substituted "projected annual savings to be generated by a suggestion" for "the suggestions" in the third sentence, and deleted the former last sentence, which read: "The departmental committee shall also report to the commissioner the names of those employees who may be eligible for service awards."

The 2001 amendment, effective April 26,

2001, substituted "agency" for "department" in two places in the first sentence, substituted "Under incentive award programs for such suggestions and ideas, each agency head" for "Each state department head" at the beginning of the first sentence, substituted "The agency committee" for "The departmental committee" at the beginning of the second sentence, and substituted "appointing authority's plan" for "department's plan" near the end of the last sentence of this Code section.

45-21-6. Further investigation of suggestions or ideas by commissioner; report of findings and recommendations; board to make final determination.

The commissioner shall make any further investigation deemed appropriate with respect to any suggestion or idea whether or not reported by the appointing authorities and shall report his or her findings and recommendations to the board. Subject to any rules adopted under this chapter, the board shall make the final determination as to what action will be taken on awards for employee suggestions or ideas including what, if anything, shall be awarded to an employee. (Ga. L. 1957, p. 336, § 7; Ga. L. 1972, p. 914, § 1; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, in the first sentence, substituted “deemed” for “which he deems”, substituted “awards whether or not reported” for “service award reported to him”, substituted “and” for “; and he”, and inserted “or her”; in the second sentence, deleted “and regulations” following “rules”, deleted “service” preceding “awards”, and substituted “, if any, or certificate or both” for “and certificate”.

The 2001 amendment, effective April 26, 2001, substituted “or idea whether or not

reported by the appointing authorities” for “or awards whether or not reported by the departmental committees” near the beginning and substituted “awards for employee suggestions or ideas including what, if anything, shall be awarded to an employee” for “awards or employee suggestions including what additional compensation, if any, or certificate or both shall be awarded to an employee whose suggestion is adopted” at the end of this Code section.

45-21-7. Awards to employees.

(a)(1) Cash awards for suggestions or ideas submitted by an employee, implemented by an agency, and approved by the board which result in direct measurable cash savings or cost avoidance shall be paid to such employee in an amount equal to up to 10 percent of the first year’s estimated net material and labor savings. The award shall be paid by the agency or agencies adopting the suggestion and shall be made within the fiscal year the suggestion or idea is authorized for payment. Cash awards shall be for not less than \$10.00 and for not more than \$5,000.00 regardless of the number of agencies adopting the suggestion.

(2) Suggestions involving improvements in working conditions; changes in procedures; revision of forms; improvement in employee morale, health, or safety; or related improvements for which the monetary value cannot be determined shall be eligible for award certificates or cash awards based on intangible savings.

(3) The board shall establish a method of evaluating such suggestions. Cash awards for suggestions involving intangible savings shall not exceed \$100.00.

(b) In recognition of achievements under incentive award programs, incentive compensation plans, or other employee achievement, the board and other appointing authorities may award:

(1) Certificates of merit;

(2) Certificates acknowledging period of service; or

(3) Pins, buttons, or other emblems. (Ga. L. 1957, p. 336, § 8; Ga. L. 1972, p. 914, § 2; Ga. L. 1973, p. 794, § 2; Ga. L. 1990, p. 8, § 45; Ga. L. 1990, p. 1251, § 1; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2000 amendment, effective July 1, 2000, inserted “up to” preceding “10 percent” twice in subsection (a); deleted the former subsection (c) which read: “All employee suggestions shall be submitted in writing on a form to be made available by the commissioner in order to be eligible for consideration for an award. All submitted

suggestions shall clearly and concisely define the specific situation or problem, state a detailed, proposed solution to such situation or problem, and indicate the expected benefit to the state.”; and redesignated former subsection (d) as present subsection (c).

The 2001 amendment, effective April 26, 2001, rewrote this Code section.

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Award as compensation not gift. — Compensation pursuant to O.C.G.A. Ch. 21, T. 45 would be payment for a service which has been performed by the employee and would not fall into the category of a gift or gratuity. 1971 Op. Att’y Gen. No. 71-183.

Money paid under the “Employees Suggestion and Awards Program” is an award, and as such does not violate the constitutional prohibition against grants or gifts, since such payment is a form of compensation. 1973 Op. Att’y Gen. No. 73-86.

Agency paying award. — Money paid to a state employee under the “Employees Suggestion and Awards Program” is an award and as such it may be paid by the state

agency or department which adopts the suggestion whether or not that agency is the employee’s appointing authority. 1973 Op. Att’y Gen. No. 73-86.

Conflicts with rules of State Personnel Board. — State Personnel Board is authorized to promulgate rules and regulations for administration of State Employees’ Suggestion and Awards Program; provided, however, that such rules and regulations do not conflict with the requirement of O.C.G.A. § 45-21-7 that number of years of state service for state service award is ascertained by director of Employees’ Retirement System of Georgia. 1982 Op. Att’y Gen. No. 82-92.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 284.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 236.

45-21-8. Costs to be borne by board and appointing authorities.

The board shall bear the costs of administration and of the certificates and emblems which it awards and appointing authorities shall bear the costs of administration and of the certificates, emblems, and incentive awards and payments which they award. (Ga. L. 1957, p. 336, § 10; Ga. L. 2000, p. 1377, § 6; Ga. L. 2001, p. 500, § 1.)

The 2001 amendment, effective April 26, 2001, substituted the present provisions for the former provision of this Code section which read: "The costs of administration and of the certificates, pins, buttons, or other appropriate emblems shall be paid from the funds of the State Merit System of

Personnel Administration and shall be included as a part of the annual budget of that agency."

Editor's notes. — Ga. L. 2000, p. 1377, § 6, effective July 1, 2000, reenacted this Code section without change.

45-21-9. Incentive payments not to be included in calculation of retirement benefits.

(a) The following incentive payments will not be included in earnable compensation in determining retirement benefits under Chapters 2 and 3 of Title 47:

- (1) Payments under an incentive awards program;
- (2) Recruitment payments under an incentive compensation plan; or
- (3) Payments for learning new, critically needed employment skills.

However, these incentive payments will be included as salary in the pay period granted and will be subject to employee withholding taxes in that pay period. If state or federal law otherwise requires an incentive payment to be included in salary for computing a benefit, the incentive will be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months.

(b) The following incentive payments under employee incentive compensation plans will be included in calculating earnable compensation in determining retirement benefits under Chapters 2 and 3 of Title 47:

- (1) Lump sum payments for surpassing performance expectations under subparagraph (c)(1)(C) of Code Section 45-21-2; and
- (2) Goal based or incentive pay under subparagraph (c)(1)(D) of Code Section 45-21-2.

When an incentive payment will be included in salary for computing retirement benefits, the incentive will be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months. These incentive payments will be included as salary in the pay period granted and will be subject to employee withholding taxes in that pay period. If state or federal law otherwise requires an incentive payment to be included in salary for computing a benefit, the incentive will be deemed to have been paid, for such purpose only, annualized in equal installments prospectively over the following 12 months. (Code 1981, § 45-21-9, enacted by Ga. L. 2001, p. 500, § 1.)

Effective date. — This Code section became effective April 26, 2001.

CHAPTER 22

PUBLIC EMPLOYEE HAZARDOUS CHEMICAL PROTECTION
AND RIGHT TO KNOW

Sec.		Sec.	
45-22-1.	Short title.	45-22-8.	Information and training standards.
45-22-2.	Definitions.	45-22-9.	Publication by employers of list of hazardous chemicals in workplace.
45-22-3.	Labeling requirements.	45-22-10.	Unlawful discharge, disciplining, or discrimination against employees.
45-22-4.	Responsibility of public contractors who introduce hazardous materials into workplace.	45-22-11.	Filing of employee grievances; termination of contract by employer for violation of Code Section 45-22-4; ability of employers to dismiss or discipline employees; judicial review of grievances.
45-22-5.	Exclusions from chapter; exclusions from labeling requirements; dissemination of information.	45-22-12.	Sovereign immunity.
45-22-6.	Assistance of Governor's Employment and Training Council in reviewing and preparing rules and regulations.		
45-22-7.	Material safety data sheets; notice to employees; rights of employees.		

Cross references. — Hazardous waste, Art. 3, Ch. 8, T. 12. Reporting of hazardous occupations and cases of occupational disease to Department of Human Resources, § 34-9-290. Consent form of exposure to hazardous chemicals, § 34-10-3.

Administrative rules and regulations. —

Public employee hazardous chemicals protection and right to know rules, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Labor, Safety Engineering, Chapter 300.3-19.

RESEARCH REFERENCES

ALR. — Infliction of emotional distress: toxic exposure, 6 ALR5th 162.

45-22-1. Short title.

This chapter shall be known and may be cited as the "Public Employee Hazardous Chemical Protection and Right to Know Act of 1988." (Code 1981, § 45-22-1, enacted by Ga. L. 1988, p. 1778, § 1.)

45-22-2. Definitions.

As used in this chapter, the term:

(1) "Article" means a finished product or manufactured item:

(A) Which is formed to a specific shape or design during manufacture;

(B) Which has end use functions dependent in whole or in part upon its shape or design during end use; and

(C) Which has either no change of chemical composition during end use or only those changes of composition which have no commercial purpose separate from that of the article.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

(3) "Commissioner" means the Commissioner of Labor or his designee.

(4) "Common name" means any designation or identification such as a code name, code number, trade name, or brand name used to identify a chemical other than by its chemical name.

(5) "Contractor," "independent contractor," or "public contractor" means any person under a contract or agreement to provide labor or services to a public employer.

(6) "Department" means the Department of Labor.

(7) "Distributor" means an individual or employer, other than the manufacturer or importer, who supplies hazardous chemicals directly to users or to other distributors.

(8) "Employee" or "public employee" means any person who is employed by any branch, department, board, bureau, commission, authority, or other agency of the state and any inmate under the jurisdiction of the Department of Corrections performing a work assignment which requires the handling of any hazardous chemicals. Such term shall not include those employees of the Environmental Protection Division of the Department of Natural Resources who are responsible for on-site response and assistance in the case of environmental emergencies while such employees are engaged in responding to such emergencies.

(9) "Employer" or "public employer" means any branch, department, board, bureau, commission, authority, or other agency of the state which employs or appoints an employee or employees. An independent contractor or subcontractor shall be deemed the sole employer of its employees, even when such employees are performing work at the workplace of another employer.

(10) "Exposed" or "exposure" means that an employee is required by a public employer to be subjected to a hazardous chemical in the course of employment through any route of entry, including but not limited to, inhalation, ingestion, skin contact, or absorption and includes potential or accidental exposure.

(11) "Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

(11.1) "Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees and shall include all examples of hazardous chemicals to which reference is made in the definition of "health hazard" under the Occupational Safety and Health Administration standard, 29 CFR Section 1910.1200 (1987).

(12) "Importer" means the first individual or employer within the Customs Territory of the United States who receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or users within the United States.

(13) "Impurity" means a hazardous chemical which is unintentionally present with another chemical or mixture.

(14) Reserved.

(15) "Manufacturer" means a person who produces, synthesizes, extracts, or otherwise makes hazardous chemicals.

(16) "Material safety data sheet" means the document prepared by manufacturers in accordance with the requirements of the Occupational Safety and Health Administration standard, 29 CFR Sections 1910.0000 through 1910.1500 (1987) and containing the following information:

(A) The chemical name and the common name of the hazardous chemical;

(B) The hazards or other risks in the use of the hazardous chemical, including:

(i) The potential for fire, explosion, corrosivity, and reactivity;

(ii) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the hazardous chemical; and

(iii) The primary routes of entry and the symptoms of overexposure;

(C) The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the hazardous chemicals, including appropriate emergency treatment in case of overexposure;

(D) The emergency procedures for spills, fire, disposal, and first aid;

(E) A description in lay terms of the known specific potential health risks posed by the hazardous chemical intended to alert any person reading this information; and

(F) The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

(17) "Medical emergency" means a medical condition which poses an imminent threat to a person's health, caused or suspected to have been caused by exposure to a hazardous chemical, and which requires immediate treatment by a physician.

(18) "Mixture" means any combination of two or more chemicals, if the combination is not, in whole or in part, the result of a chemical reaction.

(19) "Occupational Safety and Health Administration standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration, 29 CFR Sections 1910.0000 through 1910.1500 (1987).

(20) "Person" means any individual, natural person, public or private corporation, incorporated association, government, government agency, partnership, or unincorporated association.

(20.1) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water reactive.

(21) "Produce" means to manufacture, process, formulate, or repackage.

(22) "Specific chemical identity" means the chemical name, the Chemical Abstracts Service Registry Number, or any other specific information which reveals the precise chemical designation.

(23) "Work area" means a room inside a building or structure, an outside area, or other defined space in a workplace where hazardous chemicals are produced, stored, or used and where employees are present in the course of their employment.

(24) "Workplace" means an establishment or business at one geographic location at which work is performed by a state employee and which contains one or more work areas. In the case of an independent contractor or subcontractor, the workplace shall be defined as all work areas wholly owned or controlled by such independent contractor or subcontractor. (Code 1981, § 45-22-2, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, §§ 1-5.)

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“Public employers” and employees. — “Public employers” covered under O.C.G.A. Ch. 22, T. 45 are state agencies and other entities of state government, and “public employees” include individuals employed by such entities. 1989 Op. Att’y Gen. No. 89-45.

The employers covered by O.C.G.A. Ch. 22, T. 45 include entities of state government, and the employees covered are state employees. Therefore, the law covers state operated colleges and hospitals and their employees (including student employees of state colleges). However, the law does not cover the Metropolitan Atlanta Rapid Transit Authority, local (city or county) school systems, private colleges, municipalities, counties or nonstate operated hospitals that receive state financial support; nor does the law cover employees of these nonstate employers. 1989 Op. Att’y Gen. No. 89-45.

Private contractors would not be employers under the law. However, contractors, as defined under O.C.G.A. § 45-22-3(5), would be required to provide material safety sheets to public employees for hazardous chemicals

introduced into the “workplace” by the contractor or its agents. 1989 Op. Att’y Gen. No. 89-45.

Prisoners under incarceration awaiting transfers to state penal institutions would not be covered by O.C.G.A. Ch. 22, T. 45 until they are placed under the jurisdiction of the Department of Corrections. However, prisoners punished for misdemeanors could be confined in a county correctional institution and still be under the jurisdiction of the Department of Corrections. Under these circumstances, the Department of Corrections would be a covered employer and the prisoners would be covered employees; however, since the county correctional institution is not wholly owned or controlled by the Department of Corrections, it would not be a covered “workplace” as defined in O.C.G.A. § 45-22-3(24). Therefore, the requirements of the act regarding notices and the labeling of hazardous chemicals at the employer’s workplace would not apply to these prisoners. 1989 Op. Att’y Gen. No. 89-45.

RESEARCH REFERENCES

ALR. — Who is “employer” for purposes of Occupational Safety and Health Act (29 USCA §§ 651 et seq.), 153 ALR Fed. 303.

45-22-3. Labeling requirements.

All hazardous chemicals introduced into the workplace by employers and used in the workplace by employees shall be in labeled containers that meet the requirements of the Occupational Safety and Health Administration standard; provided, however, that employers shall not be required to label portable containers into which hazardous chemicals are transferred from labeled containers provided that the portable container and the hazardous chemical transferred to it are intended only for the immediate use of an employee who performs the transfer or who is present at the time of such transfer. (Code 1981, § 45-22-3, enacted by Ga. L. 1988, p. 1778, § 1.)

45-22-4. Responsibility of public contractors who introduce hazardous materials into workplace.

A public contractor who introduces hazardous materials into the workplace shall agree, and include a statement, in all bids, agreements, contracts, or other instrument to the effect that such contractor shall be

responsible for compliance with the provisions of this chapter for persons employed by such contractor utilized under such contract. Any such public contractor who introduces hazardous chemicals into the workplace shall provide material safety data sheets for such chemicals to all employees using them and instruction in handling, emergency procedures, and disposal prior to introducing such hazardous chemicals. This Code section shall not be construed to place responsibility on any person, firm, or corporation other than public contractors. (Code 1981, § 45-22-4, enacted by Ga. L. 1988, p. 1778, § 1.)

45-22-5. Exclusions from chapter; exclusions from labeling requirements; dissemination of information.

(a) The provisions of this chapter shall not apply to:

(1) Impurities which develop as intermediate materials during chemical processing but are not present in the final mixture and to which employee exposure is unlikely;

(2) Alcoholic beverages as defined in Title 3;

(3) Articles intended for personal consumption by employees in the workplace;

(4) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act, 15 U.S.C. Section 2051, et seq., and Federal Hazardous Substances Act, 15 U.S.C. Section 1261, et seq., respectively, including any such product or hazardous chemicals manufactured by any state agency, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers;

(5) Articles sold or used in retail food establishments and retail trade establishments;

(6) Chemicals which are merely being transported in the state as part of a shipment in interstate or intrastate commerce; or

(7) Chemicals or mixtures which may be hazardous but which are covered by the federal Atomic Energy Act and the federal Resource Conservation and Recovery Act.

(b) The provisions of this chapter shall not require labeling of the following chemicals:

(1) Any pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136, et seq., when such pesticide is subject to the labeling requirements of that federal act and labeling regulations issued under that federal act by the United States Environmental Protection Agency;

(2) Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in such products, as such terms are defined in the federal Food, Drug and Cosmetic Act, 21 U.S.C. Section 301, et seq., and regulations issued under that federal act, when subject to the labeling requirements under that federal act by the Food and Drug Administration;

(3) Any distilled spirits, beverage alcohols, wine, or malt beverage intended for nonindustrial use as such terms are defined in the federal Alcohol Administration Act, 27 U.S.C. Section 201, et seq., and regulations issued under that federal act, when subject to the labeling requirements of that federal act by the United States Bureau of Alcohol, Tobacco, and Firearms; or

(4) Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act, 15 U.S.C. Section 2051, et seq., and the federal Hazardous Substances Act, 15 U.S.C. Section 1261, et seq., respectively, when subject to a consumer product safety standard or labeling requirement of those federal acts or regulations issued under those federal acts by the Consumer Product Safety Commission.

(c) The department shall be responsible for the dissemination of appropriate information available on the nature and hazards of hazardous chemicals. The department shall promptly assist employers and employees with inquiries concerning the hazardous nature of such chemicals. (Code 1981, § 45-22-5, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, § 6; Ga. L. 1994, p. 97, § 45.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “federal act” was substituted for “federal Act” throughout subsection (b).

45-22-6. Assistance of Governor’s Employment and Training Council in reviewing and preparing rules and regulations.

(a) The Governor’s Employment and Training Council shall assist the department in reviewing and preparing rules and regulations necessary to administer this chapter. For the purposes of this chapter, the council shall meet at the call of the Commissioner. When the council is meeting for the purposes of this chapter, it shall make a report of each meeting, which shall include a record of its discussions and recommendations. The department shall make such reports available to any interested person or group.

(b) The Governor’s Employment and Training Council or the Commissioner shall be authorized to consult with persons knowledgeable in the field of hazardous chemicals and to create committees composed of such consultants and members of the council to assist the council and Commissioner in carrying out their duties under this chapter.

(c) The department shall consider the advice and recommendations of the council in promulgating rules and regulations and their amendments.

If the department rejects the advice and recommendations of the council, the department must provide written reasons for such rejection. (Code 1981, § 45-22-6, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1989, p. 443, § 6; Ga. L. 1991, p. 1304, § 7.)

45-22-7. Material safety data sheets; notice to employees; rights of employees.

(a) The manufacturer, importer, or distributor of any hazardous chemical shall prepare and provide the direct purchasers of such hazardous chemicals and, upon request, the department, with a material safety data sheet which, to the best knowledge of the manufacturer, importer, or distributor, is current, accurate, and complete, based on information then reasonably available to the manufacturer, importer, or distributor.

(b) Any person who produces a mixture may, for the purposes of this Code section, prepare and use a mixture material safety data sheet, subject to the provisions of subsection (j) of this Code section.

(c) A manufacturer, importer, distributor, or employer may provide the information required by this Code section on an entire mixture, instead of on each hazardous chemical in it, when all of the following conditions exist:

(1) Toxicity test information exists on the mixture itself or adequate information exists to form a valid judgment of the hazardous properties of the mixture itself and the material safety data sheet indicates that the information presented and the conclusions drawn are from some source other than direct test data on the mixture itself, and that a material safety data sheet on each constituent hazardous chemical identified on the material safety data sheet is available upon request;

(2) Provision of information on the mixture will be as effective in protecting employee health as information on the ingredients;

(3) The hazardous chemicals in the mixture are identified on the material safety data sheet unless it is unfeasible to describe all the ingredients in the mixture, provided that the reason why the hazardous chemicals in the mixture are not identified shall be stated on the material safety data sheet; and

(4) A single mixture material safety data sheet may be provided for more than one formulation of a product mixture if the information provided does not vary for the formulation.

(d) A manufacturer, importer, or distributor who is responsible for preparing and transmitting a material safety data sheet under the provisions of this Code section shall revise such material safety data sheet on a timely basis, as appropriate to the importance of any new information which would affect the contents of the existing material safety data sheet, and in any

event within three months of such information becoming available to the manufacturer, importer, or distributor.

(e) Any person subject to the provisions of this Code section shall be relieved of the obligation to provide a direct purchaser of a hazardous chemical with a material safety data sheet:

(1) If he has a record of having provided the direct purchaser with the most recent version of the material safety data sheet;

(2) If the chemical is labeled pursuant to:

(A) The federal Atomic Energy Act; or

(B) The federal Resource Conservation Recovery Act; or

(3) If the article is one sold at retail and is incidentally sold to an employer or the employer's employees in the same form, approximate amount, concentration, and manner as it is sold to consumers, and, to the seller's knowledge, employee exposure to the article is not significantly greater than the consumer exposure occurring during the principal consumer use of the article.

(f) If an employer is not supplied with a material safety data sheet by a manufacturer, importer, or distributor for a hazardous chemical subject to this Code section, such employer shall, within a reasonable amount of time after discovering that a material safety data sheet has not been supplied, use diligent efforts to obtain such material safety data sheet from the manufacturer, importer, or distributor. For purposes of this subsection, "diligent efforts" shall mean a prompt inquiry by the employer to the manufacturer, importer, or distributor of the hazardous chemicals; provided, however, that an independent contractor or subcontractor shall be responsible for obtaining the material safety data sheet for his employees in the workplace of another.

(g) If after having used diligent efforts, an employer still fails to obtain a material safety data sheet, he shall request the department to obtain such material safety data sheet on his behalf.

(h) An employer who has used diligent efforts and who has made a documented request to the department pursuant to this Code section shall not be found in violation of this Code section with respect to the material safety data sheet which was not supplied by the manufacturer, importer, or distributor as required by this Code section.

(i) Every employer who manufactures, produces, uses, applies, or stores hazardous chemicals in the workplace shall post a notice as prescribed by rule promulgated by the department in a place where notices are normally posted, informing employees of their rights under this chapter.

(j) Every employer who manufactures, produces, uses, applies, or stores hazardous chemicals in the workplace shall maintain a material safety data

sheet for each hazardous chemical which is present in such workplace. All material safety data sheets shall be readily available in the workplace; provided, however, that employers who maintain one or more work areas which are not fixed at specific geographic locations shall be authorized to maintain material safety data sheets for each hazardous chemical used in such work area at a central location.

(k)(1) A material safety data sheet may be kept in any form, including operations procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be appropriate to address the hazards of a process rather than individual hazardous chemicals. The employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each workshift to employees when they are in their work area; provided, however, that employers who maintain one or more work areas which are not fixed at specific geographic locations shall be authorized to maintain material safety data sheets for each hazardous chemical used in such work area at a central location.

(2) Any employee may request in writing and shall have the right to examine and obtain the material safety data sheets for the hazardous chemicals to which he is, has been, or may be exposed. The employer shall provide any material safety data sheet within its possession within five of the requesting employee's working days, subject to the provisions of subsection (g) of this Code section. The employer may adopt reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

(3) An independent contractor or subcontractor working in the workplace of another employer may request in writing and shall have the right to examine the material safety data sheets for the hazardous chemicals to which he or his employees are, have been, or may be exposed. The employer shall provide any material safety data sheet within its possession within five of the requesting independent contractor's or subcontractor's working days, subject to the provisions of subsection (g) of this Code section. The employer may adopt reasonable procedures for acting upon such requests to avoid interruption of normal work operations.

(4) If an employee who has requested a material safety data sheet pursuant to this chapter has not received such material safety data sheet within five of the requesting employee's working days, subject to the provisions of subsection (g) of this Code section, that employee may refuse to work with the chemical for which he has requested the material safety data sheet until such material safety data sheet is provided by the employer; provided, however, that nothing contained in this paragraph shall be construed to permit any employee to refuse to perform essential services; provided, further, that nothing in this paragraph shall be

construed to interfere with the right of the employer to transfer an employee who so refuses to work to other duties until such material safety data sheet is provided, such a transfer not to be considered as a discriminatory act under Code Section 45-22-10. No pay, position, seniority, or other benefits shall be lost for exercise of any right provided by this chapter as a result of such a transfer.

(l) No employer shall discharge or otherwise discriminate against an employee for the employee's assertion of the employee's rights under this chapter.

(m) For the purposes of this Code section, an employer, independent contractor, or subcontractor shall maintain material safety data sheets for their own workplaces only; provided, however, that employees of such independent contractor or subcontractor, insofar as they are exposed in the course of their employment to hazardous chemicals in other workplaces, shall have the right to examine material safety data sheets for those chemicals to which they are exposed from the workplace employer through a written request to their own employer as provided in paragraph (2) of subsection (k) of this Code section. Employers must advise employees that they can obtain further information from the department. Nothing contained in this chapter shall be construed to require an employer to conduct studies to develop new information. (Code 1981, § 45-22-7, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, §§ 8, 9; Ga. L. 1992, p. 6, § 45.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “an” was substituted for “a” following “discriminate against” in subsection (l).

45-22-8. Information and training standards.

(a) Each employer shall be required to comply with the minimum information standards set forth in this subsection. Each employee shall be informed of:

- (1) The requirements of this Code section;
- (2) What a material safety data sheet is and the contents of the material safety data sheet for any hazardous chemical to which he is exposed, or equivalent information, either in written form or through training programs;
- (3) Any operations in his work area where hazardous chemicals are present;
- (4) The location and availability of training programs;
- (5) His right to receive information regarding hazardous chemicals to which he may be exposed;
- (6) His right for his physician to receive information regarding hazardous chemicals to which the employee may be exposed; and

(7) His right against discharge or other discrimination due to the employee's exercise of the rights provided by this chapter.

(b) In addition to providing the information required by subsection (a) of this Code section, each employer shall be required to provide a training program for all employees who are exposed to hazardous chemicals in the normal course of their employment. When training employees who are exposed to hazardous chemicals, the employer shall explain any physical or health hazards associated with the use of the chemical or mixture; proper precautions for handling, necessary personal protective equipment or other safety precautions necessary to prevent or minimize exposure to the hazardous chemical; methods of observation that may be used to detect the presence or release of a hazardous chemical in a work area, including, but not limited to, spot check monitoring, continuous monitoring, or methods of visual or olfactory detection; the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information; and emergency procedures for spills, fire, disposal, and first aid. This information may relate to an entire class of hazardous chemicals to the extent appropriate and related to the job. Whenever any employer receives a new or revised material safety data sheet, such information shall be provided to employees on a timely basis not to exceed 30 days after receipt, if the new information indicates significantly increased risks to or measures necessary to protect employee health as compared to those stated on a material safety data sheet previously provided.

(c) The department shall by rule and regulation establish minimum information and training standards for compliance with this Code section. The Governor's Employment and Training Council shall be authorized to make recommendations to the department regarding the development and implementation of such standards. (Code 1981, § 45-22-8, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1989, p. 443, § 7; Ga. L. 1991, p. 1304, § 10.)

45-22-9. Publication by employers of list of hazardous chemicals in workplace.

On and after July 1, 1989, each employer shall publish in January and July of each year a list of hazardous chemicals that its employees use or are exposed to in the workplace. Such list shall be available for public inspection at the workplace office. A comprehensive list of all hazardous chemicals used by the employer shall also be available for public inspection at the employer's state headquarters. (Code 1981, § 45-22-9, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, § 11.)

45-22-10. Unlawful discharge, disciplining, or discrimination against employees.

(a) No person shall discharge or cause to be discharged or otherwise discipline or in any manner discriminate against any employee for any of the following reasons:

(1) The employee has requested information regarding hazardous chemicals, filed any complaint or action, or has instituted, or caused to be instituted, any proceeding under this chapter;

(2) The employee has testified or is about to testify in any proceeding in his own behalf or on behalf of others; or

(3) The employee has exercised any other right afforded pursuant to the provisions of this chapter.

(b) No pay, position, seniority, or other benefits shall be lost for exercise of any right provided by this chapter. (Code 1981, § 45-22-10, enacted by Ga. L. 1988, p. 1778, § 1.)

45-22-11. Filing of employee grievances; termination of contract by employer for violation of Code Section 45-22-4; ability of employers to dismiss or discipline employees; judicial review of grievances.

(a) In order to enforce the provisions of this chapter, any employee adversely affected by a violation of this chapter by that employee's employer may file a grievance in accordance with the employer's established grievance procedures. Appointing authorities shall pursue all complaints concerning occupational exposure to hazardous chemicals. Employees dissatisfied with a final decision of an appointing authority may file a grievance with the Commissioner.

(b) Upon any violation of Code Section 45-22-4 by a contractor, the employer under agreement with such contractor shall have the right to terminate the contract without liability.

(c) Nothing in this chapter shall change or modify the right or ability of employers to dismiss or discipline employees in accordance with the laws of this state.

(d) Any employee adversely affected by a final decision of the Commissioner to a grievance filed pursuant to subsection (a) of this Code section shall be entitled to judicial review in the same manner as provided for judicial review of contested cases in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." (Code 1981, § 45-22-11, enacted by Ga. L. 1988, p. 1778, § 1; Ga. L. 1991, p. 1304, § 12.)

45-22-12. Sovereign immunity.

Nothing in this chapter shall be construed to constitute a waiver of the sovereign immunity of the state or any branch, department, board, bureau, commission, authority, or other agency of the state. A violation of the provisions of this chapter shall not be the basis for an action for damages against the state or any branch, department, board, bureau, commission, authority, or other agency of the state or any member, officer, or employee

of the state or any branch, department, board, bureau, commission, authority, or other agency of this state and said entities and persons are granted immunity from civil actions for damages for any violation of the provisions of this chapter. (Code 1981, § 45-22-12, enacted by Ga. L. 1988, p. 1778, § 1.)

CHAPTER 23

DRUG-FREE PUBLIC WORK FORCE

Sec.		Sec.	
45-23-1.	Short title.	45-23-6.	Additional or more stringent sanctions authorized.
45-23-2.	Legislative finding and declaration.	45-23-7.	Continuance of employment for drug user; requirements and procedure.
45-23-3.	Definitions.	45-23-8.	Administrative procedures.
45-23-4.	Suspension or termination of public employee convicted of drug offense.	45-23-9.	Application of chapter.
45-23-5.	Ineligibility for public employment of person convicted of drug offense.		

Administrative rules and regulations. — Drug abuse treatment programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Resources, Chapter 290-4-2.

Law reviews. — For note on 1990 enactment of this chapter, see 7 Ga. St. U.L. Rev. 383 (1990).

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First offender treatment not “conviction”. — First offender treatment upon a verdict or plea of guilty is not a “conviction” within the meaning of the “Drug Free Workplace Act”

(O.C.G.A. § 45-23-1 et seq.), applicable to public employees. 1992 Op. Att’y Gen. No. 92-10.

45-23-1. Short title.

This chapter shall be known and may be cited as the “Drug-free Public Work Force Act of 1990.” (Code 1981, § 45-23-1, enacted by Ga. L. 1990, p. 2004, § 1.)

45-23-2. Legislative finding and declaration.

The General Assembly finds that the manufacture, distribution, sale, or possession of controlled substances, marijuana, and other dangerous drugs in an unlawful manner is a serious threat to the public health, safety, and welfare. It is declared to be a primary purpose and goal of this state, of all of its agencies and instrumentalities, and of all of its public officials and employees to take all reasonable steps possible to eradicate the unlawful manufacture, distribution, sale, and possession of controlled substances, marijuana, and other dangerous drugs. With this purpose in mind, the General Assembly declares that its work force must be absolutely free of any person who would knowingly manufacture, distribute, sell, or possess a controlled substance, marijuana, or a dangerous drug in an unlawful

manner. For this reason, the General Assembly enacts this chapter. (Code 1981, § 45-23-2, enacted by Ga. L. 1990, p. 2004, § 1.)

45-23-3. Definitions.

As used in this chapter, the term:

(1) “Controlled substance” means any drug, substance, or immediate precursor included in the definition of the term “controlled substance” in paragraph (4) of Code Section 16-13-21.

(2) “Convicted” or “conviction” refers to a final conviction in a court of competent jurisdiction or the acceptance of a plea of guilty.

(3) “Dangerous drug” means any drug or substance defined as such under Code Section 16-13-71.

(4) “Marijuana” means any substance described in paragraph (16) of Code Section 16-13-21.

(5) “Public employee” means any person employed on a full-time, part-time, temporary, or intermittent basis by the state, including any agency, authority, department, bureau, or instrumentality thereof, or by any entity covered under the State Merit System of Personnel Administration. Such term shall also include all employees, officials, or administrators of any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.

(6) “Public employer” means any state agency, department, board, bureau, or other instrumentality. This term also includes any agency covered under the State Merit System of Personnel Administration or any public school system, including, but not limited to, primary, secondary, and postsecondary institutions operated by local or independent boards of education that receive any funds from the State of Georgia or any agency thereof.

(7) “Public employment” means employment by any public employer. (Code 1981, § 45-23-3, enacted by Ga. L. 1990, p. 2004, § 1.)

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“**Conviction**” as defined in the Drug-Free Public Work Force Act of 1990 does not include treatment under the Georgia First

Offender Act, nor does it include a conviction based on a plea of nolo contendere. 1990 Op. Att’y Gen. No. 90-16.

45-23-4. Suspension or termination of public employee convicted of drug offense.

(a) Any public employee who is convicted for the first time, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be suspended from his or her public employment for a period of not less than two months. Any such employee shall be required as a condition of completion of suspension to complete a drug abuse treatment and education program licensed under Chapter 5 of Title 26 and approved by: (1) the State Personnel Board in the case of employees in the classified service of the state merit system; or (2) the public employer having management and control of the employee in the case of other public employees.

(b) Any public employee who is convicted for a second or subsequent time, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be terminated from his or her public employment and shall be ineligible for other public employment for a period of five years from the most recent date of conviction. (Code 1981, § 45-23-4, enacted by Ga. L. 1990, p. 2004, § 1.)

Cross references. — Controlled substances, Ch. 13, T. 16.

45-23-5. Ineligibility for public employment of person convicted of drug offense.

(a) Any person who has been convicted for the first time, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be ineligible for any public employment for a period of three months from the date of conviction.

(b) Any person who has been convicted two or more times, under the laws of this state, the United States, or any other state, of any criminal offense involving the manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug shall be ineligible for any public employment for a period of five years from the most recent date of conviction. (Code 1981, § 45-23-5, enacted by Ga. L. 1990, p. 2004, § 1.)

Cross references. — Controlled substances, Ch. 13, T. 16.

45-23-6. Additional or more stringent sanctions authorized.

The suspension, expulsion, and ineligibility sanctions prescribed in this chapter are intended as minimum sanctions, and nothing in this chapter shall be construed to prohibit any public employer from establishing and implementing additional or more stringent sanctions for criminal offenses and other conduct involving the unlawful manufacture, distribution, sale, or possession of a controlled substance, marijuana, or a dangerous drug. (Code 1981, § 45-23-6, enacted by Ga. L. 1990, p. 2004, § 1.)

45-23-7. Continuance of employment for drug user; requirements and procedure.

On and after July 1, 1990, if, prior to an arrest for an offense involving a controlled substance, marijuana, or a dangerous drug, a public employee notifies the employee's public employer that the employee illegally uses a controlled substance, marijuana, or a dangerous drug and is receiving or agrees to receive treatment under a drug abuse treatment and education program licensed under Chapter 5 of Title 26 and approved by (1) the State Personnel Board in the case of employees in the classified service of the state merit system or (2) the public employer having management and control of the employee in the case of other public employees, the public employee shall be entitled to maintain the employee's public employment for up to one year as long as the employee follows the treatment plan. During this period, the public employee shall not be separated from public employment solely on the basis of the employee's drug dependence, but the employee's work activities may be restructured if practicable to protect persons or property. No statement made by an employee to a supervisor of the public employee or other person in order to comply with this Code section shall be admissible in any civil, administrative, or criminal proceeding as evidence against the public employee. The rights granted by this Code section shall be available to a public employee only once during a five-year period and shall not apply to any public employee who has refused to be tested or who has tested positive for a controlled substance, marijuana, or a dangerous drug. (Code 1981, § 45-23-7, enacted by Ga. L. 1990, p. 2004, § 1.)

45-23-8. Administrative procedures.

Administrative procedures for the implementation of this chapter shall be promulgated by the State Personnel Board for the classified service of the state merit system and by other public employers for other public employees under their management and control. Such procedures shall include those elements of due process of law required by the Constitution of Georgia and the United States Constitution. (Code 1981, § 45-23-8, enacted by Ga. L. 1990, p. 2004, § 1.)

45-23-9. Application of chapter.

This chapter shall apply only with respect to criminal offenses committed on or after July 1, 1990; provided, however, that nothing in this Code section shall prevent any public employer from implementing sanctions additional to or other than those provided for in this chapter with respect to offenses committed prior to July 1, 1990. (Code 1981, § 45-23-9, enacted by Ga. L. 1990, p. 2004, § 1.)

CHAPTER 24

GOVERNMENTAL REORGANIZATION AND TERMINATION
FROM EMPLOYMENT REFORM

Sec.		Sec.	
45-24-1.	Short title.		required; proceedings when continued employment available; review of termination or separation.
45-24-2.	Definitions.		
45-24-3.	State Personnel Oversight Commission.		
45-24-4.	Commission to approve involuntary separation; compliance with Code Section 45-24-8 required for reorganization.	45-24-7.	Authorization to proceed with separation.
45-24-5.	Notice to commission prior to involuntary separation.	45-24-8.	Proceedings for reorganization.
45-24-6.	Notice to chief executive officer of state departments; response	45-24-9.	Notice of involuntary separation; taxpayers' pension advocate; providing briefs; attendance at commission meetings.

Editor's notes. — Ga. L. 1992, p. 1855, § 1, effective July 1, 1995, repealed the Code sections formerly codified at this chapter. The former chapter consisted of Code Sections 45-24-1 through 45-24-9, relating to family leave, and was based on Code 1981, §§ 45-24-1 through 45-24-9, enacted by Ga. L. 1992, p. 1855, § 1.

45-24-1. Short title.

This chapter shall be known and may be cited as the “Governmental Reorganization and Termination from Employment Reform Act of 1997.” (Code 1981, § 45-24-1, enacted by Ga. L. 1997, p. 1528, § 1.)

45-24-2. Definitions.

As used in this chapter, the term:

- (1) “Commission” means the State Personnel Oversight Commission.
- (2) “Employer” means an employing unit within the government of the State of Georgia, including every department, commission, board, bureau, agency, branch of government, or any other employing unit by whatever name called, which has the authority and power to appoint, employ, release, separate, or fail to reappoint public officers or employees.
- (3) “Involuntary separation” means the release or separation from state service of an officer or employee who is entitled to coverage under the involuntary separation retirement benefits provisions of Code Section 47-2-123.

(4) "State department" means a unit of state government which is a budget unit in the General Appropriations Act. (Code 1981, § 45-24-2, enacted by Ga. L. 1997, p. 1528, § 1.)

45-24-3. State Personnel Oversight Commission.

(a) There is created the State Personnel Oversight Commission to be composed of three members appointed by the President of the Senate, three members appointed by the Speaker of the House of Representatives, and three members appointed by the Governor. The Governor shall appoint one of the Governor's appointees as chairperson. Five members of the commission shall constitute a quorum for the transaction of business. None of the members shall be officers or employees of the state. The President of the Senate shall designate one of such officer's initial appointees to serve an initial term of one year, one of such officer's initial appointees to serve an initial term of three years, and one of such officer's initial appointees to serve an initial term of five years. The Speaker of the House of Representatives shall appoint one of such officer's initial appointees to serve an initial term of two years, one of such officer's initial appointees to serve an initial term of four years, and one of such officer's initial appointees to serve an initial term of five years. The Governor shall appoint one of such officer's initial appointees to serve an initial term of one year, one of such officer's initial appointees to serve an initial term of two years, and one of such officer's initial appointees to serve an initial term of three years. After the expiration of such initial terms of office, successors to members of the commission whose initial terms of office expire and all future successors to members of the commission whose terms of office expire shall be appointed by the person occupying the office which made the original appointment and shall serve for a term of five years and until the appointment and qualification of their respective successors. Vacancies on the commission, except those caused by expiration of term, shall be filled by the appointment of a replacement member by the person occupying the office which made the appointment to the membership position on the commission which became vacant, and the person so appointed shall serve for the remainder of the unexpired term and until the appointment and qualification of a successor.

(b) The members of the commission shall serve without compensation but shall receive the allowances authorized for legislative members of interim legislative committees. The Governor's office shall maintain the names and addresses of the members of the commission as a matter of public record. The Georgia Building Authority shall make available to the commission such meeting facilities as the chairperson may request. The commission shall be assigned to the Employees' Retirement System of Georgia for administrative purposes only, as defined in Code Section 50-4-3. (Code 1981, § 45-24-3, enacted by Ga. L. 1997, p. 1528, § 1.)

45-24-4. Commission to approve involuntary separation; compliance with Code Section 45-24-8 required for reorganization.

From and after July 1, 1997, no employer shall cause the involuntary separation of a state officer or employee without the prior approval of the commission. An employer may proceed with a reorganization which might result in such involuntary separation without prior approval of the commission upon compliance with Code Section 45-24-8. (Code 1981, § 45-24-4, enacted by Ga. L. 1997, p. 1528, § 1.)

45-24-5. Notice to commission prior to involuntary separation.

An employer contemplating the involuntary separation from state service of an officer or employee shall notify the chairperson of the commission at least 90 but not more than 120 days prior to the proposed date of the separation. Pending the completion of such procedures, the employee or officer proposed for termination shall be compensated from any funds appropriated or available to the employer which may be used for such purpose. The notice shall be in writing and shall include the following information:

- (1) The name and current annual compensation of the officer or employee proposed for involuntary separation;
- (2) The age, length of service, current job description, and summary of the work experience of the officer or employee proposed for involuntary separation;
- (3) The educational qualifications of the officer or employee proposed for involuntary separation; and
- (4) An explanation of the reasons for the proposed involuntary separation of the officer or employee. (Code 1981, § 45-24-5, enacted by Ga. L. 1997, p. 1528, § 1.)

45-24-6. Notice to chief executive officer of state departments; response required; proceedings when continued employment available; review of termination or separation.

(a) The commission shall provide written notice of each contemplated involuntary separation to each chief executive officer of each state department, which notice shall contain the information required in the notice to the commission under Code Section 45-24-5 and be provided at least 60 days prior to the effective date of the contemplated involuntary separation. Within 21 days after such notice is sent by first-class mail, each such department chief executive officer shall provide a written response to the commission regarding whether or not such department has available any position of continued employment for that official or employee proposed

for termination from employment which may meet the requirements of paragraphs (1) through (3) of subsection (a) of Code Section 45-24-8. A failure of a department chief executive officer to provide a written response in accordance with the provisions of this subsection shall result in that chief executive officer's department becoming ineligible to have any increase in the number of employees in such department for the next two fiscal years, shall authorize the commission to require that chief executive officer to appear and testify before any meeting of the commission scheduled in accordance with subsection (c) of this Code section, and shall also authorize the commission to obtain a writ of mandamus against such chief executive officer to compel the performance of any duties imposed by this subsection upon such officer.

(b) If any response provided under subsection (a) of this Code section shows the availability of continued employment, the commission shall meet within 14 days after the response deadline to determine whether the continued employment indicated in any response meets the requirements of paragraphs (1) through (3) of subsection (a) of Code Section 45-24-8. If the commission determines such response meets those requirements, it shall offer continued employment in that position to the officer or employee on whose behalf the response was obtained; otherwise, the commission shall proceed as provided in subsection (c) of this Code section. Any official or employee who is thus offered a position of continued employment shall be deemed to have resigned from service at his or her own choice upon that person's failure to accept the position of continued employment, and no such official or employee so resigning from service shall qualify for retirement benefits based upon involuntary separation from employment without prejudice.

(c) If none of the responses obtained from department chief executives under subsection (a) of this Code section shows availability of continued employment meeting the requirements of paragraphs (1) through (3) of subsection (a) of Code Section 45-24-8, the commission chairperson shall schedule a meeting of the commission to review the release or separation. Five members of the commission shall be a quorum. At the meeting, the employer shall have the burden of convincing the commission that the involuntary separation is necessary, justified, and in the best interests of the state. The commission may request as much information and may meet as many times on each case as it deems necessary to reach an informed decision. No action shall be taken on the separation of the officer or employee until the commission makes a final determination as to whether the separation is necessary, justified, and in the best interests of the state. (Code 1981, § 45-24-6, enacted by Ga. L. 1997, p. 1528, § 1; Ga. L. 1999, p. 81, § 45.)

45-24-7. Authorization to proceed with separation.

If the commission by majority vote of those members present approves the involuntary separation, the employer is authorized, but not required, to proceed with the separation. If the employer proceeds with such separation, the employer shall not be eligible to have any increase in the number of employees in that employing unit for the next two fiscal years. If the commission rejects the involuntary separation, the employee shall not be separated, shall continue to be employed and compensated by the employer, and shall not be the subject of a proposed involuntary separation more than once every two years. As used in this Code section, the term "number of employees" means the total number of employees immediately prior to the involuntary separation, not counting any employee to be involuntarily separated. (Code 1981, § 45-24-7, enacted by Ga. L. 1997, p. 1528, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "Code section" was substituted for "subsection" in the last sentence.

45-24-8. Proceedings for reorganization.

(a) No employer shall institute a reorganization of that employer or any component thereof if the reorganization will result in the involuntary separation of any official or employee thereof who is eligible for involuntary separation unless, prior to that reorganization becoming effective, that employer effects a transfer of each such official or employee to another component of the employer not subject to such reorganization or obtains a transfer of each such official or employee to another employer, which transfer shall meet the following requirements:

(1) The annual compensation for the new employment position is the same or greater than the current annual compensation of the official or employee being transferred;

(2) The duties and responsibilities for such position shall be reasonably compatible with the previous work experience and educational qualifications of the official or employee being transferred and the availability of an unclassified position for a person in a classified position shall be deemed a comparable position if the duties, responsibilities, and compensation of the unclassified position are otherwise comparable to the classified position; and

(3) The position is one which includes the holder thereof as a member of the Employees' Retirement System of Georgia.

(b) An official or employee transferred to an employer pursuant to this Code section shall be deemed to have resigned from service at his or her own choice upon the failure of such person to accept the transfer and shall

therefor not qualify for retirement benefits based upon involuntary separation from employment without prejudice.

(c) A reorganization by an employer in violation of this Code section is void, and no official or employee shall be separated from employment as a result of such void reorganization, whether or not that person is eligible for involuntary separation. (Code 1981, § 45-24-8, enacted by Ga. L. 1997, p. 1528, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Reassignment from classified to unclassified service. — If an agency has identified another position in the agency which meets the four requirements of former O.C.G.A. § 47-7-123(h)(2), but would entail reassign-

ment of the employee from the classified service to the unclassified service, the unclassified position would be considered a comparable position. 1997 Op. Att'y Gen. No. 97-17.

45-24-9. Notice of involuntary separation; taxpayers' pension advocate; providing briefs; attendance at commission meetings.

(a) When the commission is notified of a contemplated involuntary separation as provided in Code Section 45-24-5, the commission shall immediately notify the Attorney General and shall provide the Attorney General with all information and documentation concerning the matter as the commission has been provided or is subsequently provided.

(b) Immediately upon being notified of a contemplated involuntary separation as provided in subsection (a) of this Code section, the Attorney General shall appoint an attorney on his or her staff to act as the taxpayers' pension advocate in the matter. Such attorney shall not be the attorney assigned to advise the Employees' Retirement System of Georgia. It shall be the duty of the taxpayers' pension advocate to review all aspects of the termination of the employee and the application for involuntary separation retirement benefits and to raise all possible objections, both factual and legal, to the employee's being granted such benefits. All state agencies shall cooperate with the taxpayers' pension advocate and shall provide him or her with nonprivileged information upon request.

(c) As soon as practicable but not later than the date scheduled for the meeting of the commission provided in subsection (c) of Code Section 45-24-6, the taxpayers' pension advocate shall prepare a brief of fact and law and shall raise all objections to the involuntary separation of the employee or to the granting of involuntary separation retirement benefits to the employee. The taxpayers' pension advocate shall provide a copy of such brief to each member of the commission and to each member of the Senate Retirement Committee and the House Committee on Retirement.

(d) The taxpayers' pension advocate shall attend each meeting of the commission held pursuant to subsection (c) of Code Section 45-24-6 and

shall make oral arguments before the commission supporting the brief prepared pursuant to subsection (c) of this Code section. (Code 1981, § 45-24-9, enacted by Ga. L. 2000, p. 1363, § 1.)

Effective date. — This Code section became effective July 1, 2000.

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